SYSTEMS OF LAND TENURE
IN ANCIENT ISRAEL

by

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PREFACE

The present study on land tenure systems in ancient Israel attempts to define the different traditions of land tenure evident in the available sources and relate them to the historical periods to which they pertain. The result is believed to be a history of land tenure in Israel reflecting the changes that transpired and the conflicts which they provoked. The scope of the study extends from what may be called the prehistory of Israel, the patriarchal period, down to the Babylonian exile.

The importance of the study lies in the manner in which it illustrates the difference in the structure of society in the monarchical period from that of the period of tribal confederacy which preceded it. The difference in land tenure customs between the two periods demonstrates the fundamental changes that took place with the establishment of the monarchy, and supports the view that the monarchy brought about a very significant break in the traditions of ancient Israel.

The sources of direct information on the problem are limited to the Old Testament, and the references therein to land tenure are often incidental to some other purpose. The amount of information thereby afforded is frequently scant, so that a working out of the definitions of land tenure systems would have been practically impossible if one were limited to those sources. Accordingly, the method of this paper is comparative. The documents of various kinds from different parts of the Near East contemporary with ancient Israel have been searched for facts relating to land holding customs. The information they have yielded, when applied in a comparative way to the pertinent biblical references, has permitted the development of the ensuing view of Israel's land holding customs. Communities in Mesopotamia and Syria have provided most of this comparative material.

Chapter One discusses land tenure in Palestine during the patriarchal period, before the formulation of Israel as a people. It serves, therefore, somewhat in the capacity of an introduction. Chapter Two describes the land tenure system as an integral part of that covenant community referred to in this paper as the tribal confederacy. Chapter Three describes the changes that took place in land tenure customs during the Monarchy, when large numbers of people outside the covenant community were included in the state. The changes are represented as an assimilation to the Canaanite elements of the kingdom.

It is my pleasant duty to acknowledge help received in the development of this study. Professor George E. Mendenhall aroused the writer's interest in the subject, and thereafter gave considerable counsel and guidance in the project. Professor George G. Cameron offered many helpful criticisms and suggestions, and provided a number of very useful bibliographical references.

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LIST OF ABBREVIATIONS

AASOR	*Annual of the American Schools of Oriental Research*
AJSL	*American Journal of Semitic Languages*
AHDO	*Archives d'histoire du droit oriental*
ANET	James B. Pritchard (ed.), *Ancient Near Eastern Texts Relating to the Old Testament* (2nd ed., Princeton, N.J.: Princeton University Press, 1955).
ARM	*Archives royales de Mari*
ArOr	*Archiv Orientální*
BA	*The Biblical Archaeologist*
BASOR	*Bulletin of the American Schools of Oriental Research*
BDB	Francis Brown, S. R. Driver, and Charles A. Briggs, *A Hebrew and English Lexicon* (Oxford: The Clarendon Press, corrected impression, 1952).
CAD	*The Assyrian Dictionary of the Oriental Institute of the University of Chicago*
CH	*Code of Hammurapi*
CT	*Cuneiform Texts from Babylonian Tablets in the British Museum.*
IEJ	*Israel Exploration Journal*
HUCA	*Hebrew Union College Annual*
JAOS	*Journal of the American Oriental Society*
JBL	*Journal of Biblical Literature*
JCS	*Journal of Cuneiform Studies*
JNES	*Journal of Near Eastern Studies*
JQR	*Jewish Quarterly Review*
JSS	*Journal of Semitic Studies*

NKRA	Paul Koschaker, *Neue Keilschriftliche Rechtsurkunden aus der El-Amarna-Zeit*, *Der Abhandlungen der Philologisch-Historischen Klasse der Sächsischen Akademie der Wissenschaften*, XXXIX (1928).
PEQ	*Palestine Exploration Quarterly*; *Palestine Exploration Fund Quarterly Statement*
PRU, II	Charles Virolleaud, *Le palais royal d'Ugarit*, II: *Textes en cunéiformes alphabétiques des archives est, ouest, et centrales* (Paris: Imprimerie Nationale, 1957).
PRU, III	Jean Nougayrol, *Le palais royal d'Ugarit*, III: *Textes accadiens et hourites des archives est, ouest et centrales* (Paris: Imprimerie Nationale, 1955).
RA	*Revue d'assyriologie et d'archéologie oriental*
RB	*Revue biblique*
RIDA	*Revue internationale des droits de l'antiquité*
RSV	*Revised Standard Version of the Bible* (1952).
TCL	*Textes cunéiformes*, Musée du Louvre (Paris, 1910-)
VS	*Vorderasiatische Schriftdenkmäler der königlichen Museen zu Berlin*
WVDOG	*Wissenschaftliche Veröffentlichung der Deutschen Orient-Gesellschaft*
ZAW	*Zeitschrift für die alttestamentliche Wissenschaft*
ZA	*Zeitschrift für Assyriologie und verwandte Gebiete*

CHAPTER I

THE PATRIARCHAL PERIOD

The patriarchal narratives of Genesis provide little direct information on the subject of land tenure, and what is given is only incidental to the account of the patriarchs' experiences. Frequent appeal will therefore be made to cognate cultures for materials which clarify the Bible narratives. Since the patriarchs plainly had their roots in Mesopotamia, it seems quite natural to draw upon that area for most of the illustrations, but other regions will not be ignored when they provide information to illuminate the biblical patterns.

Direct Purchase of Land

Biblical Instances

Instances of direct purchase of land in Palestine recorded in the patriarchal narratives are limited to two: (1) Abraham's purchase of the field of Ephron (Gen. 23), and (2) Jacob's purchase of land from the sons of Hamor at Shechem (Gen. 33:19). A remark by Hamor seems to imply that the acquisition of land by purchase is the normal and expected thing, for he said: "the land shall be open to you, dwell in it, and trade in it, and get property in it."[1] Although the verse does hot specifically mention the purchase of real property, the implication of it here in this context is hardly avoidable.[2]

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[1] Gen. 34:10, Revised Standard Version. Bible quotations will normally be made from this version, but the writer will on some occasions translate from the Hebrew text.

[2] The niphal verb form (*he'aḥ^{a}zu*) is also employed in Josh. 22:9, 19 to mention the acquisition of real property by the two and one-half tribes of Israel who settled in Transjordan. Gen. 47:27 uses the verb of the settlement of Jacob's sons in Egypt. See also Num. 32:30. *'aḥaz* is the semantic equivalent of the English word "seize," which also relates to the acquisition of property. In its technical legal sense it means to put a person in legal possession of a feudal holding, to invest or endow with property. *The Oxford English Dictionary* (Oxford: Clarendon Press, 1961), Vol. IX, p. 402.

The absence of any contrary evidence leads to the conclusion that purchase was a normal thing, and that the Canaanite practice of the region was in this respect similar to the general practices of Mesopotamia, where the buying and selling of land was common.[3] It has been stressed that Abraham was a sojourner in Palestine, and as such lacked certain rights of the natives.[4] One may be right in speculating on the basis of Gen. 23:4, that Abraham was entitled to purchase land on a permanent basis only with the consent of the citizenry, but this in no way affects the generalization that purchase of land was normal.

Mesopotamian Backgrounds

The implied concept of private property and the freedom to purchase land in the patriarchal narratives is in harmony with the Mesopotamian background of these stories. The racial and cultural ties of the patriarchs to Mesopotamia are a prominent feature of the biblical record, and the accord with the customs of the land of the two rivers which these and other migrants observe evokes no surprise.

Private ownership of property in lower Mesopotamia was known in the beginning of historical times (i.e. the Ur I period), although it is not the only custom of landholding attested there. An inscription from Uruk, dating from pre-Sargonic times, contains the records of the sale of and the payment for a number of fields by various individuals. About eight such sales are recorded.[5]

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[3] The generalization is made with the awareness that Mesopotamia exhibits great variety in landholding customs, which the writer will take up later in detail.

[4] E. Marmorstein, "The Origins of Agricultural Feudalism in the Holy Land," PEQ, LXXXV (1953), pp. 111-117.

[5] James B. Nies, JAOS, XXXVIII (1918), pp. 188-196.

The presence of large temple estates in lower Mesopotamia during the early dynastic period has led some scholars to develop a theory of temple-economy which practically embraced the whole society.[6] As popularly presented, this theory held that in the early Mesopotamian civilization the god of each city was regarded as the owner of the entire surrounding land, both cultivated and uncultivated, that the city governor was the vicegerent of the god, and that the citizens were his tenants.[7] Frankfort remarked that all the land ascribed to a certain city was owned by the god (or gods) of the city, and that in these places there was theoretically, at least, no private holding of land, even though there did appear to be a limited opportunity for private enterprise.[8] An exception to the sole ownership of the land by the god is recognized in the private grounds of the governor, who evidently owned private property. At Lagash he had estates comprising a total of one hundred sixty-one hectares, while his consort had two large estates comprising a total of sixty-six and one-third hectares.[9] The reforms of Urukagina are understood to have been undertaken to restore to the god property which had been misappropriated by certain officials, as well as sacred land which had been seized by former city governors.[10]

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[6] Anna Schneider, Die Sumerische Tempelstadt, Plenge staatswissenschaftliche Beiträge, IV (Essen, 1920). Anton Deimel, Sumerische Tempelwirtschaft zur Zeit Urukaginas und seiner Vorgänger, Analecta Orientalia, II (Rome: Pontifical Biblical Institute, 1931).

[7] Rachel Clay, "The Tenure of Land in Babylonia and Assyria," University of London Institute of Archaeology Occasional Paper, No. 1 (1938), pp. 1, 2.

[8] Henri Frankfort, The Birth of Civilization in the Near East (Garden City, New York: Doubleday and Company, 1956), pp. 65-76.

[9] Svend Aage Pallis, The Antiquity of Iraq (Copenhagen: Ejnar Munksgaard, Ltd., 1956), pp. 491, 492.

[10] Maurice Lambert, "Les 'reformes' d'Urukagina," RA, L (1956), p. 181. I. M. Diakonoff, "Some Remarks on the 'Reforms' of Urukagina,"

This view of temple economy has recently been challenged on the basis of more information as well as a re-examination of the materials on which it was based.[11] The city of Lagash was much larger than the two hundred to three hundred square kilometers which it had been estimated to be, so that before the loss of territory at the end of the reign of Urukagina its territory must have comprised at least two thousand square kilometers. The population of free working men at Lagash was also much greater than first thought, certainly many more than the number of free men working for the temples. A computation of the area of temple land based on an estimate of its working personnel would suggest a figure of from five hundred to a thousand square kilometers. On this basis, the temple estates certainly did not encompass all the territory of Lagash.[12]

The temple lands at Lagash at the end of the early dynastic period were of several categories, but there is no evidence that any of it could ever be bought or sold. There are, however, numerous documents referring to the sale of land during this period, found in many of the more important sites in northern and southern Babylonia. These do not refer to any of the categories of temple land presently known. An analysis of the sales documents reveals a picture of agrarian conditions quite different from those revealed by the documents of the temple archives.[13]

RA, LII (1958), pp. 7, 8, 12, 14. Alexander Scharff und Anton Moortgat, *Ägypten und Vorderasien im Altertum* (München: F. Bruckmann, 1950), pp. 242, 243.

[11] I. M. D'i͡akonov, *Obshchestvennyĭ i gosudarstvennyĭ stroĭ drevnego Dvurech'i͡a: Sumer*. English Summary: "Society and State in Ancient Mesopotamia, Sumer" (Moscow, 1959), pp. 291-299.

[12] *Ibid*., pp. 291, 292.

[13] *Ibid*., p. 293.

Some land of this early dynastic period was in the hereditary possession of patriarchal families. Such land could be sold, either by the head of the family or by a group of its representatives; but other family members took part in the transaction as witnesses and received a nominal payment along with the vendors. The sale of big tracts of land appears to have needed the approbation of the whole community or town. Since there is no reason to believe that this salable land was ever a part of the temple property, one may suppose that from the start there existed alienable land which was distinct from temple land.[14]

During the early dynastic period practically all the agricultural work, including irrigation work, was done by free men. The free population of Sumer appears to have been divided between two categories: (1) those who were dependent upon the temple (or king) and received land for their sustenance on condition of their service, or, (2) men who held a share in the community land of an extended family, or who owned private property. At least half of the population belonged to this second group.[15]

The sale documents show the existence not only of plots belonging to common members of the community, but of large estates belonging to the hereditary nobility of the community. The noble families possessed estates measuring hundreds of hectares. This nobility was later supplanted by a bureaucratic nobility under Akkadian and Ur III kings, and their holdings were smaller.[16]

The agricultural society of the Old Akkadian period was apparently not very different. The land outside the cities was subdivided into estates (É) of various sizes, and these were owned by the king, by his family and officials, by the temple, or by private individuals, a situation which likewise does not fit the picture of a completely theocratic organization of society.[17] A tablet from this time lists eight men who serve as witnesses that a certain Mututu measured a house (É= estate) for Ilum-ašu. The measuring was done doubtless for the purpose of selling, and the same document might have sufficed for the sale document.[18]

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[14] *Ibid.*, p. 294 f.

[15] *Ibid.*

[16] *Ibid.*

Private ownership is also established for the Akkad period from the stele of Manishtusu. The stele records the purchase of large estates by the king for his son, and gives the price, the boundaries, and the names of the parties involved. The king paid for the land an average price,[19] and did not simply appropriate the land in spite of his superior advantage. This fact would argue that the institution of private ownership was well-established in his time. The same monument testifies, however, to the fact that private ownership existed side-by-side with family landrights. One property purchased by the king is mentioned as being bordered by two canals, by land belonging to a family, and by land owned by a private individual.[20]

The purchaser in some of these sales prior to the Ur III period executed certain accessory costs in addition to the purchase price,[21] a feature already observed in the early dynastic period. The foundation of some of these accessory costs is uncertain; but others, handed over to officials, functionaries, or scribes, must have remunerated them for their part in the transaction. Still others went to relatives or neighbors of the seller who served as witnesses; but the role of these seems to have been more than mere testimony. It is possible that the payments in this last category were for the purpose of obtaining a renunciation to the right that relatives and neighbors would have to oppose the sale.[22] Thus these documents of private ownership and sale bear traces of a co-ownership of family or of clan which were carried along in the customs and which acted somewhat as a restraint upon the free circulation of property.

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[17] Ignace J. Gelb, Old Akkadian Inscriptions in Chicago Natural History Museum (Chicago: Chicago Natural History Museum, 1955), pp. 181, 182.

[18] Ibid., pp. 186-190.

[19] C. H. W. Johns, Babylonian and Assyrian Laws, Contracts and Letters (New York: Charles Scribner's Sons, 1904), p. 192.

[20] Vincent Scheil, Mémoires de la délégation en Perse, II, Textes élamites-sémitiques (1900), pp. 28, 29. Cf. Leonard W. King, A History of Sumer and Akkad (London: Chatto and Windus, 1910), p. 206f.

[21] Georges Boyer, "Nature et formation de la vente dans l'ancien droit babylonien," AHDO/RIDA, II (1953), pp. 50, 51.

The subsidiary payments were clearly specified separately from the designated sale price.[23] One such type of payment is variously called *nì*. *ki*. *gar* or *nì*. *diri*, depending, it seems, on geographic differences. In many texts the relative value of this additional payment to the specified price is difficult to determine, because the sale price is given in exact weight of metal, whereas the added payment is often listed in natural products like grain or oil, or in cloth.

In texts from Fara, however, the values of both the sale price and the additional payment are given in silver or copper. Fluctuation in the relation between the two sums is observable even so, but usually the additional payment is smaller than the price. Often the added payment is one sixth the sale price. In one instance it is one-half. An example in the Maništusu stele shows a relation of one-tenth.

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[22] *Ibid*.

[23] Lubor Matouš, "Zu den Ausdrücken für 'Zugaben' in den vorsargonischen Grundstückkaufurkundenen," *Archiv Orientální*, XXII (1954), pp. 434-443.

A Shuruppak contract gives an unusual example in which the additional payment was larger than the sale price. Six *iku* of land sold for six mina of copper, but the additional payment was fourteen mina. In another case, two *iku* of ground cost six mina of copper, but the added payment was twenty mina of copper. Actually then, these additional payments must be reckoned into the real price of the field. In the later texts from the Diyala region during the Akkad dynasty, the additional payment is given in silver, natural products, wool, and other articles. Usually the ratio of it to the stated price was about one-twelfth.

Yet another payment other than the ones discussed above was called *nì. ba*, "gift." In a Shuruppak text six *iku* of field sold at a price of twelve mina, but required an additional payment (*nì. diri*) of twelve mina, plus a "gift" (*nì. ba*) of thirteen mina, making a total of thirty-seven mina as the real price of the field. In most cases, however, the "gift" is rendered in natural products rather than weight of metal. In the Diyala contracts the additional payments were given in silver, copper or grain, but the "gifts" were regularly in oil, victuals, wool, clothing, and so forth.

The additional payments and gifts appear to be not only for the sellers, but possibly also for their relatives and the persons participating in the sale of the land, such as the witnesses, the surveyor, and the scribe. The gifts especially seem to be for the relatives and the neighbors.[24] These payments may be evidence of a collective ownership of the land, with a private ownership replacing it.

Some of the terms in the documents designating participants in the sales point in the same direction. In the contracts the sellers are referred to as *dumu. gána* ^{me}, "sons of the field," while the stele of Maništusu has a parallel Akkadian expression, *bēlū eqlim*.[25] The relatives of the sellers, who along with the neighbors received the so-called "gifts," possibly are mentioned on the stele of Maništusu as the *ŠEŠ be-lu GÁN*, "brothers of the owners of the field."[26]

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[24] *Ibid.*, p. 442.

If the interpretation is accepted which sees evidences of a collective ownership, it is none the less clear that private ownership existed at the same time. In one of the Fara texts the seller is one individual. Also pointing to private ownership is the fact that the Fara tablets came from private dwellings of small dimension.[27] In Shurruppak of the Ur-Nanshe period private economy existed along with the collective-economy of the community and the temple economy.[28]

In the Diyala region of Sargonid times an even more developed private economy is evident. The purchase documents mention only one person as the seller, whether they be great fields, or small ones of only a few *iku*. The "gifts" (*nì. ba*) are not mentioned in these tablets, but during this same time the custom of the "gifts" is being observed in Akkad, as the Manistusu stele shows.[29]

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[25] *Ibid*. "Aus der Bezeichnung der Verkäufer der Grundstückkomplexe im Lummatur-Vertrag als *dumu. gána*^{me}, die Parallel zum akkadischen Ausdruck am Obelisk Maništusus *bēlū eqlim* steht, geht hervor, dass die Besitzer der Felder Mitglieder einer Gemeinde waren, die kollektiv den gemeinsamen Boden bewirtschafteten." p. 441.

[26] Scheil, *Mémoires de la Délégation en Perse*, II, pls. 1 ff.; face A, col. V:14; face B, col. VI:3; etc. Matouš, *op. cit.*, p. 442, n. 58, quoted the text as if it read *aḫḫū eqlim*. I. J. Gelb, *Materials for the Assyrian Dictionary* (Chicago: University of Chicago Press, 1957), no. 3, p. 87, denies that *ŠEŠ be-lu GÁN* means "brothers of the owners of the field."

[27] Matouš, *op. cit.*, p. 442.

[28] *Ibid*.

[29] *Ibid*.

Concerning the Ur III period, it is maintained that private holdings were limited to houses and small enclosures, and that there was a decrease in the circulation of private property from former times.[30] So little is known, however, about the Ur III period from sources outside the temple areas, that the conclusion may not be well founded.

Documents from the period of the first dynasty of Babylon provide a wealth of indications that outright sale of land was common. The standard sales documents contain the customary items of: (1) description of the size and location of the property, (2) identification of the buyer(s) and seller(s), (3) statement that the full price has been paid and that the seller is satisfied, (4) fixing of the responsibility for claims, etc. The sales contracts of this period do not show (with a slight exception to be pointed out below) any subsidiary payments such as in the pre-Sargonid and Sargonid periods which might indicate a community ownership. There appears to be unrestricted buying and selling of land. Freedom to sell is enjoyed whether the property is confined to that surrounding a house, or is larger in extent and properly called a field. Contracts exhibiting these outright sales are known from Larsa,[31] Kish,[32] the Diyala region,[33] and numerous other places.[34]

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[30] Frankfort, op. cit., p. 73, n. 1.

[31] Matouš, "Les contrats de vente d'immeubles provenant de Larsa," ArOr, XVIII, no. 4 (1950), pp. 11-67. W. F. Leemans, Legal and Economic Records from the Kingdom of Larsa (Leiden: E. J. Brill, 1954), pp. 7-28.

[32] Marguerite Rutten, "Un lot de tablettes de Mananâ," RA, LII (1958), pp. 208-225; LIII (1959), pp. 77-96.

[33] S. D. Simmons, "Early Old Babylonian Tablets from Harmal and Elsewhere," JCS, XIII (1959), pp. 71-93, 105-119; XIV (1960), pp. 23-32, 49-55. Henry F. Lutz, Legal and Economic Documents from Ashjaly. University of California Publications in Semitic Philology, X (1931), pp. 12, 17, 22, 35.

[34] Edouard Cuq, Études sur les droit babylonien les lois assyriennes et les lois hittites (Paris: Paul Geuthner, 1929), p. 78. Emile

In the Code of Hammurapi, freedom under ordinary circumstances to sell real estate is only implied, not stated. The regulations in the code having to do with sale of property deal only with forbidding the sale of certain properties, namely, "fief" land. Certain lands, held as grants from the king by soldiers, officials and functionaries for which services were due, could not be sold.[35] While this phenomenon will be discussed more conveniently below, the point may be made here that by mentioning only these restrictions, the code otherwise takes for granted the practice of outright sales.

Although the sale of land was common in the Old Babylonian period, there appear to have been limitations in some circumstances. The law of redemption, if operative, would have imposed one restriction. The Laws of Eshnunna stipulated that if a person because of poverty sold his house, he should be entitled to redeem it.[36] It is not known whether or not the law was observed.

Two real estate sales documents from Mari may reflect a kind of hindrance to land purchases.[37] They are transactions which evidently had the same finality as other sales of the Old Babylonian period pointed out above, since the full price was paid, and oaths were taken

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Szlechter, Tablettes juridiques de la I^{re} dynastie de Babylone (Paris: Recueil Sirey, 1958), Pt. II, pp. 43-47.

[35] CH, paras. 36, 37, 40, 41.

[36] Albrecht Goetze, The Laws of Eshnunna, AASOR, XXXI (1956), para. 39, pp. 105, 106, 108. Cf. ANET, p. 163. Another law of Eshnunna supposed to limit sales and purchases (para. 38) is too uncertain in its translation and interpretation to be used safely. See AASOR, XXXI, pp. 105, 107, 108; and ANET, p. 163. Boyer, AHDO/RIDA, II, p. 51, presents an interpretation which appears just as uncertain.

[37] Georges Boyer, ARM, VIII, Textes juridiques (Paris: Imprimerie Nationale, 1958), texts 2 and 3, pp. 8-11. Texts 13 and 18 may be transactions of the same type, but broken areas in the tablets prevent certainty.

against reopening the question of ownership by instituting claims. Strangely, however, some of the witnesses in the two Mari texts received payments. Out of twelve witnesses to one transaction, two were paid; three out of nine were paid in the other.

The payment to witnesses suggests a comparison with the additional payments and gifts made to persons other than the seller in purchases of the pre-Sargonid and Sargonid periods. It may be that the Mari sales indicate a survival of the older custom, and point to some awareness of a former collective ownership based on family, clan, or neighborhood. Taken in this light, acceptance of the payment by the witnesses might indicate their agreement not to oppose the sale, or to insist upon their right of redemption.[38]

Not all sales of land at Mari reflect such hindrances or restrictions. Other documents appear as outright sales, with statements that the total price has been paid and containing clauses that signify the conclusion of a regular sales transaction.[39]

The sale documents from Assyria point to the conclusion that the sale of land was practiced there without restriction also, but the statement is made with caution, since the relevant documents are few in number and date from the Middle Assyrian period.[40] They can be used in discussing the background of patriarchal times only on the assumption that they do not represent customs new to their own period.

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[38] Ibid., pp. 189, 187. In support of this interpretation, Boyer points out that one of the witnesses to receive payment was the neighbor who held the property right next to the one being sold. See text 3 and compare lines 2 and 20. Gen. 21:30 records a payment to a witness where no sale took place, and where it could not be a matter of renouncing a claim based on family relation. The practical effect of Abraham's gift, none the less, was to acquire Abimelech's renunciation to any claim to the well over which there had been dispute.

[39] Boyer, ARM, VIII, texts 4 and 5, pp. 11-15. Cf. texts 8 and 15, pp. 18-21, and 30-33, which are land exchanges. The clauses referred to are those establishing fines against a party to the agreement who might attempt to reclaim the property, and those which state that the bukannum (pestle) has been handed over. The latter seemingly refers to some symbolic action which indicated that the sale was terminated. S. D. Simmons, JCS, XIII (1959), p. 90. M. Rutten, RA, LIII (1959), pp. 209, 210.

The Middle Assyrian laws imply the practice of outright sales[41] when they stipulate that a public proclamation of intent to buy must be made three times within a month before a sale is consumated. Whether or not this requirement was complied with, the law assumed that the sales would take place.

Hittite Parallels

Abraham's purchase of land from the Hittites (*b^{e}nê ḥet*) shows interesting parallels to Hittite law, suggesting that his purchase conformed not only to the general cultural pattern of the land from which he came, but to that also of the people with whom he was dealing.[42]

Certain parts of the Hittite law code[43] dealing with the acquisition of property declare that when a person obtained property either by inheritance or purchase, the obligation to perform ilku[44] service devolved upon him only when all the property passed into the possession of the new owner. The pertinent parts in the law state that when a person acquires fields he shall render the services if all the property has been given or sold to him. If he inherits or buys only a part of a field, he shall not render the services, for in such case the obligation still rests upon the original owner.

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[40] Erich Ebeling, *Keilschrifttexte aus Assur juristischen Inhalts*, *WVDOG*, L (1927), texts 146-149, 151-156, 174. Paul Koschaker, *NKRA*, p. 27ff., discusses these texts, and provides on p. 28 a summary of the essential parts of texts recording the sale of fields. Assyrian sale documents from a later period are numerous, but are not under consideration at this point.

[41] Tablet B, para. 6. *ANET*, p. 185. Cf. G. R. Driver and John C. Miles, *The Assyrian Laws* (Oxford: Clarendon Press, 1935), pp. 311-320.

[42] In the Bible the land of the Hittites generally means north Syria. The Hittites mentioned in the following discussion may well have been earlier from Syria. Ephron and Zohar (Gen. 23:8) are Semitic names. In Akkadian sources also Syria was called *Hatti* land, even centuries after the Hittites ceased to be a power in the Near East, because the Syrians continued many elements of the Hittite cultural tradition.

[43] Albrecht Goetze, *ANET*, paras. 46, 47, p. 191.

In the biblical text Abraham first requested that Ephron sell[45] him the cave which was at the end of his field (Gen. 23:9). Ephron countered with the offer to sell the field and the cave which was in it. Abraham agreed to the condition and bought the whole property, paying the price set by Ephron (vs. 10-16).

Based on a comparison with the above-quoted texts from the Hittite Code, it may be suggested that Abraham sought to buy only the cave at the edge of the field because he wished to avoid the ilku service which was the obligation of the possessor of the whole property. Ephron, however, seeing a chance to rid himself of the ilku service, refused to divide his property and gave Abraham the alternative of buying all, or nothing. Abraham bought the entire property, and thereby assumed, it is presumed, the feudal obligations for the whole piece.[46]

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[44] The word in this context means service performed for a higher authority in return for land held. CAD, VII, p. 74, col. 2. In Syria such service was often owed even when the land was bought and sold and otherwise treated as private property. PRU, III, p. 61, no. 16.156; p. 129, no. 16.343.

[45] The verb natan should in this chapter be translated "to sell." Manfred R. Lehman, "Abraham's Purchase of Machpelah and Hittite Law," BASOR, no. 129 (Feb., 1953), p. 15-17.

[46] Ibid. pp. 16, 17. The high price on the field (400 shekels!) may indicate that Ephron was not eager to sell.

The transfer of the ilku service to the purchaser reflects quite a difference in Hittite custom from that of Babylon. In the Code of Hammurapi interest is centered upon the feudatory person, whom it binds almost irrecovably to the feudal obligations, whereas in the Hittite Code the field, rather than its possessor, is considered the ilku producing agent.[47]

Gen. 23:17, 18, which records the **consummation** of the sale to Abraham, summarizes the content of the agreement in a way reminiscent of the juridic precision found in the sale documents of Mesopotamia.[48] However, a special feature is the prominent mention of the trees in the purchase. This detail also is a point of contact with Hittite law, for it was a trait in Hittite business documents to list the exact number of trees involved in a real estate sale.[49]

Syrian Examples

Such information as is available from Syria for this period shows that sale of real estate was practiced there with apparently no hindrances. The tablets from Alalakh yield a number of documents recording sales, especially those taken from level VII, which are regarded as deriving from the eighteenth century, B. C. A few of these documents record sales of property between private citizens. One is a receipt for a well-cultivated plot of land;[50] another shows the sale of a house or a small plot of land.[51] Three tablets record private sales of vineyards of sizes from one to three iku.[52] One other has to do with a sale transacted by a merchant on behalf of the king.[53]

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[47] Ibid., p. 17.

[48] R. de Vaux, La Sainte Bible, La Genèse, (Paris: Les Éditions du Cerf, 1953), p. 110, note a.

[49] Lehman, op. cit., p. 17, 18.

[50] D. J. Wiseman, The Alalakh Tablets (London: The British Institute of Archaeology at Ankara, 1953), no. 379, p. 103.

An interesting and unusual feature of property sales at Alalakh is the purchase of whole villages. King Iarimlim bought a village for which he paid the full price and satisfied the sellers. The usual penalty clause against breaking the contract is present, but it evidently foresees the possibility of infraction only on the part of the sellers, since the guilty party must pay the full value of the sale to the temple of Adad as well as to the palace.[54] The same kind of purchase was effected by Ammitaku, the governor of Alalakh.[55] Not only rulers engaged in these purchases of villages; the chief merchant of Alalakh made at least two such purchases.[56] In one he paid not only the full price of 3,080 shekels of silver and quantities of grain, oil, wine and garments, but he also guaranteed to the seller life tenure of 100 iku of land, in addition to annual payments of copper and other goods. Another such purchase by one who seemingly was a private citizen was completed with the payment of a much smaller price.[57]

Yet another purchase of villages by the governor Ammitaku is of interest because with the villages he also purchased the ilku services of the inhabitants.[58] This condition seems to indicate clearly that in Alalakh the ilku service was attached to the land more than to the subject. In this matter the custom compares more to that of the Hittites than to the Babylonians.

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[51] Ibid., no. 59, p. 49.

[52] Ibid., nos. 62, 63, 64, pp. 49, 50.

[53] Ibid., no. 60, p. 49.

[54] Ibid., no. 52, p. 47. For a similar case see no. 53.

[55] Ibid., no. 54.

[56] Ibid., nos. 56 and 57, p. 48.

[57] Ibid., no. 58, p. 49.

Finally, we note the situation where villages were traded one for the other. Our examples of this show a king or governor dealing for villages or groups of them with private investors, merchants or speculators.[59] For example, King Abban exchanged a village for a district held by four men,[60] the fourth of whom was the above-mentioned chief merchant of Alalakh.

The Akkadian documents from Ugarit also show that in Syria landed property was commonly sold. There are examples of outright sales of vineyards and fields.[61] The second part of a document relates that a certain woman sold a house which was the gift of her husband to another party for the full price (ina šimti gamirti).[62] The purchaser is said to have "received a tablet from the king," which seems to mean that he was given a special tablet in confirmation of his ownership.[63]

In a tablet executed in the presence of the king the same buyer bought land and paid for it with silver plus some land which he had taken in gage! The land is said to be delivered by the seller and also by the king.[64] Such a statement seems to provide in effect another royal guarantee of ownership. The purchaser was also declared exempt from services attached to the land.

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[58] Ibid., no. 55, p. 48.

[59] Ibid., nos. 76-80, p. 52.

[60] Ibid., no. 76, p. 52.

[61] PRU, III, nos. 15.37, 15.182, p. 35.

[62] Ibid., no. 16.263, p. 49.

[63] Boyer, "Étude juridique," PRU, III, pp. 285, 286. For some reason the ordinary sale document does not offer enough security for the purchaser.

A lady bought some fields in another transaction executed before the king, paying the total price in silver. An unusual feature in this case is that the sellers must assume the services,[65] whereas in most cases at Ugarit the services were performed by the new holder of the property. Another sale document declares that the land purchased has no service attached to it, although the purchaser must assume another service which is evidently attached to him in his office or function.[66]

Four other tablets record direct sales between private parties and are not complicated with the inclusion of such details as are discussed above.[67] Three of them, however, are headed with the common notation that the transaction was effected in the presence of the king. It is probable that in many cases the presence of the king was purely fictitious, and that the acts so recorded were accomplished before scribes of the royal chancellery.[68]

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[64] *PRU*, III, no. 16.140, pp. 45, 46. The verb to deliver is in both cases *ittadinšu* (lines 19, 20). The purchaser was the highly favored Nuriyanu, a brother of the king. For another purchase with some of the same features, see no. 16.133, pp. 59, 60.

[65] *Ibid*., no. 16.156, p. 61. Three different services are attached to the fields (*ilku*, *pilku*, and *unuššu*), although in other contexts *ilku* and *pilku* seem to be synonyms. Nougayrol seems to regard the three terms as synonymous, pp. 226, 227.

[66] *Ibid*., no. 16.139, pp. 145, 146.

[67] *Ibid*., no. 16.207, p. 109; no. 16.131, p. 138; no. 16.137, p. 143; no. 16.281, p. 161.

[68] Boyer, "Étude juridique," *PRU*, III, p. 284.

The king himself sold property to his subjects, sometimes the property of other subjects.[69] In one instance the king seized the property of a subject who had defaulted in an obligation and sold the land to another party.[70]

Quite a number of sales between private persons were concluded before the king, when at the same time the purchaser was declared exempt from services.[71] Whether these were new exemptions with respect to the land being purchased, or merely the renewal of old ones, is not certain.[72] One document involves two purchases; however, only of the second is it said that the land involves no service, although both purchases are said to have been "sold" by the former owner and "given"[73] by the king. We may assume that these royal "gifts" strengthen the title of the new owner of the land.

Some direct exchanges of land are also recorded at Ugarit, sometimes with payments of silver given to equalize the values.[74] In one exchange the contracting parties also exchange the services,[75] emphasizing the point already made that in this society the services were more attached to the land than to the persons. There are cases in which the king was involved in trades of houses or fields with his subjects.[76]

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[69] *PRU*, III, no. 16.135, pp. 89, 90. The property carries the name of another party. The king may be selling confiscated property, or perhaps for convenience the land had retained the name of a former holder.

[70] *Ibid*., no. 16.174, p. 63. The interpretation differs slightly from Nougayrol's. See p. 29 and note 5.

[71] *Ibid*., no. 16.147, p. 90; no. 15.136, p. 121; no. 15.167, p. 124; no. 16.154, p. 127; no. 16.261, p. 159.

[72] In the case of 16.147, the exemption may be a new one, since the term used is from *zakū*. In the other tablets of this group, the existence of the service is denied (*iānu*).

[73] *PRU*, III, no. 15.119, pp. 86-88. The verbs for "sold" and "given" are both derived from *nadānu*.

[74] *Ibid*., no. 15.123, p. 89; no. 16.246, p. 95.

[75] *Ibid*., no. 15.123.

One Ugaritic document has, it would seem, significant parallels with Abraham's purchase in Palestine. For a substantial sum one Takhulinu purchased some fields and other properties.[77] The sale was irrevocable, but the contract contained some special clauses owing to the fact that the purchaser was a resident alien. If he or any of his descendants should ever say to the king, "you are not our master, another king is our master," then the property would revert to the former owner and his sons, who would also keep the money. Everything else which Takhulinu owned would evidently be confiscated, for neither his sons nor his cattle nor anything else which he had in the country of Ugarit could be taken out. But so long as he gave evidence of loyalty to the king the property was secure to him.[78] Not only did the transaction occur in the presence of the king, as the beginning of the tablet indicates, but it bore the king's seal at the end, making the entire matter incontestable.

Such a purchase by a resident alien evidently required the sufferance of the crown. The details of Abraham's purchase from Ephron the Hittite seems to imply the necessity of obtaining permission from the local citizens.[79] Abraham appealed to an assembly of them (possibly elders) for approval to buy a burying place, mentioning his status as an alien.[80] On their consent, the bargaining with Ephron began.

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[76] _Ibid._, no. 16.197, p. 150, 151; no. 16.383, p. 164. In the second case the contracting parties are exchanging houses which bear the name of a third party.

[77] _Ibid._; no. 16.353, pp. 113, 114.

[78] Disloyalty to Yahweh as king by the acknowledgment of other gods is represented in the Old Testament as a reason why Israel was expelled from her land, which was given to other peoples. See Deut. 29:28 (Hebrew, 29:27); Lev. 18:28; 20:22.

[79] Gen. 23:3-8.

This brief survey of the customs of land purchase in Mesopotamia and Syria makes no pretense of being exhaustive, but enough has been given to show that in the age of the biblical patriarchs direct sale of land was common and normal. To be sure, other customs having to do with land acquisition were concurrent, and some of them will be significant in the discussion of later features of Israel's land tenure customs.

If objection is made that the two brief biblical notices of purchase are scarcely sufficient to bear the weight of the generalization that direct sale was normal, the answer is two-fold: (1) The Bible only indirectly informs us on customs in Canaan during this period. The sale of land was probably so common that no mention of it was made in the biblical record except when there was some special significance attached to it; that is, when the land in question had some peculiar significance to later society and tradition. (2) The two examples of sale that we do have reinforce the conclusion most likely on a comparative basis, that land tenure in Canaan was similar to the practices of Mesopotamia and Syria.

Inheritance Customs

The inheritance customs of the patriarchal period must also be understood in the light of parallels from Mesopotamia and Syria. The rules for inheritance are not given in the Old Testament, except for cases that are in exception to the general practice, so the places where inheritance is touched upon are best explained by comparison with the customs in neighboring cultures.

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[80] Two Hebrew terms stress his alien status (גֵּר וְתּוֹשָׁב).

Perhaps the largest source of information on inheritance in Mesopotamia is in the Code of Hammurapi, but here also there is no complete discussion of the rules, but a setting forth of how the laws are to be applied in specific cases where there may have been ambiguity, or where there may have been more than one tradition previous to the promulgation of the Code.

Participation of Legitimate Sons

According to the Code of Hammurapi, the legitimate sons inherited their father's estate, each receiving an equal share--a generalization inferred from several paragraphs that deal with special cases. An hypothetical case is described in which the father has bestowed as a gift some property (a field, orchard, or house) upon a son whom he favored.[81] In the division after the father's death, the favored son shall keep the present which the father gave him, but otherwise the sons shall share equally in the estate. Since the gift to the preferred son is treated as an exception, and as a matter which had to be done by special action with a sealed document during the father's lifetime, it is logical to conclude that the general practice was for all the sons to share alike.

Another law deals with a situation in which a father had not acquired a wife for his youngest son before his decease. Before the division of the property among the sons could take place, money from the estate had to be assigned to provide a bride-price whereby the youngest son was to obtain a wife; thereafter the father's estate was to be divided equally among the sons. This provision effectively guaranteed that the unmarried son got a share equal to that of his older brothers.[82]

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[81] CH, para. 165. The code may be conveniently consulted in Theophile J. Meek, "The Code of Hammurabi," ANET, pp. 163-180.

[82] CH, para. 166.

The rule is given also for the settlement of an estate where the father has had sons by a first wife, and after her decease has married again and had sons by the second wife. On the death of the father the property is to be divided among all the sons. It is specifically said that they shall not divide according to mothers. This I understand to mean that it shall not be that the sons of the first wife divide one-half the estate and the sons of the second wife divide the other half the estate; but rather, that all the sons shall share equally. Only in regard to the dowries shall the sons divide according to their respective mothers.[83]

Safeguards were established by the Code to insure that the property to be inherited by the sons was not misappropriated. If a father should die while his children were still minors, and the widow should decide to remarry, she could not do so without the consent of the judges. The judges were to investigate the condition of the deceased husband's estate and then put it in the trust of the woman and her second husband. A tablet was to be deposited containing an inventory of the property, and the property must be managed and conserved for the children. None of the property could be sold. Whoever might purchase the property belonging to the sons of the widow must forfeit his money and the property reverted to the sons.[84]

A son could be disinherited, but so strong was a son's claim to an inheritance that disinheritance could be accomplished only under carefully regulated conditions. When a man decided to disinherit his son, he had to announce his intention to the judges. The judges were to investigate the son's record, and if he had committed no offense sufficiently grave, he could not be disinherited. If it proved to be sufficiently grave, but it was his first offense, he was forgiven; if a grave offense had been committed a second time, the father could disinherit him.[85]

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[83] CH, para. 167.

[84] CH, para. 177. See also G. R. Driver and John C. Miles, The Babylonian Laws (Oxford: The Clarendon Press, 1952), Vol. I, p. 356.

There is yet another way in which a son could be deprived of at least a part, if not the whole, of his father's property, in favor of another son. The father may by means of a sealed document present to his wife a field, orchard, house, or other property. After his death the children may not contest the wife's claim to that which has been presented to her. She has the enjoyment of this property for life, and is free to bestow it upon any son whom she may prefer, but she may not give it to an outsider.[86] Any sons whom she does not include are thereby dispossessed of what would otherwise have been their share in that part of the father's estate. This same provision is further illuminated by a tablet from Ugarit[87] in which Yarimanu leaves to his wife, Bidawa, his field, his livestock and his moveable property. Whoever of his two sons should enter into a lawsuit with his wife or treat her with disrespect must pay one-hundred shekels of silver to the king and leave the house without so much as his tunic. The one, however, who honors his mother is the one to whom she will give the property. Again it is a case of the widow enjoying the usufruct of the land with freedom to exercise her choice among the sons as to whom it should be given. One of the sons will in effect lose his inheritance, since the document does not entertain the thought that both sons will give due honor to his mother and thus both inherit, unless the document was designed only to stimulate competition between the two in the honoring of the mother. A somewhat comparable situation is also known from Nuzi.[88]

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[85] CH, para. 168, 169. Driver and Miles, The Babylonian Laws, I, pp. 348-350.

[86] CH, para. 150.

[87] F. Thureau-Dangin, "Trois Contrats de Ras-Shamra," Syria, XVIII (1937), pp. 246, 249, 250.

Should a man die without descendants, his brothers took over the estate. There is nothing in the Code of Hammurapi which specifies this, but it may be inferred that such was the case during the Hammurapi era. Two documents from before the first dynasty of Babylon state that if a man leaves no descendant, a brother takes the inheritance.[89] The inference from the Hammurapi Code is taken from the rules on the succession to the dowry. If a dowry had been given to a woman who died childless, the husband could not claim it but had to return it to the house of the woman's father, for it technically belonged there unless the woman bore sons to inherit it, and it would go ultimately to her brothers. It is a probable conjecture anyway, that the brothers would inherit the property of one who had no children, since the brothers had been co-owners with him before the last division.[90]

In Syria as well as in Babylonia it was the sons who normally succeeded to the property of an estate. A document from Ugarit[91] records the division of a property among the sons. However, one of the sons, possibly the eldest, appears to have been charged with the responsibility of the division, and he apportioned to each brother his proper share. The impression is given that the brothers have been treated alike and that they have shared equally in the inheritance. No one of them is to raise a claim against another. ~~In~~ the event that one does, a talent of silver and 1000 shekels of gold are to be paid to the royal treasury, and the dissident party also loses his allotment of property to the distributing brother.

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[88] E. A. Speiser, "New Kirkuk Documents Relating to Family Laws," The Annual of the American Schools of Oriental Research, X, (1928-1929), p. 50, 51.

[89] Henri de Genouillac, Inventaire des tablettes de Tello conservées au musée impérial ottoman, III, 6439; V, 6754. Cited by Driver and Miles, Babylonian Laws, I, p. 342.

[90] CH, paras. 163, 164. Driver and Miles, Babylonian Laws, I, p. 342. So also Edouard Cuq, op. cit., p. 62.

[91] PRU, III, no. 15.90, p. 54. Mentioned by Josef Klima in "Untersuchungen zum ugaritischen Erbrecht," ArOr, XXIV (1956), p. 364.

Three other documents from Ugarit[92] show how a certain father distributed his property among his three sons. A tablet defines for each son what his properties are to be. The two who appear to be the older are declared to be free from the claims of each other. The mother is said to have taken all her money and personal goods and left the household; so she was not included in the division of the real property. The third son is declared free from the claims of one brother, but nothing is said about the other. This third son was borne by a second wife, who was freed from slavery and made the mistress of the house of her son. Thus she was provided for as long as she should live, but she had no real share in the inheritance. The property went only to the sons.

Preferred Status of the Eldest Son

Preferential treatment of the eldest son in the inheritance appears in the documents of the Old Babylonian period, both from the south and the north. A tablet from Uruk shows an older brother receiving property considerably in excess of his younger brothers.[93] At Nippur some texts indicate a preferential right of the eldest son, but it is not said by what proportion his inheritance is greater than that of his brothers.[94] Larsa texts, from before and during Hammurapi's time, indicate that the eldest son sometimes inherited a larger share (usually amounting to about double) than his brothers.[95]

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[92] PRU, III, no. 16.143, pp. 81, 82; no. 16.157, pp. 83, 84; no. 16.250, pp. 85, 86. Discussed by Klima, ArOr, XXIV (1956), p. 361f.

That the preferment of the eldest son was known at Mari is confirmed by an adoption tablet,[96] although it is not possible yet to say that it was the general practice. The adopted son and the adoptive parents are protected by appropriate clauses from being renounced by the other. The tablet anticipates the possibility that the parents might later acquire other children, and stipulates that in that event the adopted shall be preferred above the others and be given a double share.

Although preferential treatment of the eldest son is known from various places in Old Babylonia, the practice received scant recognition in the Hammurapi Code. According to the code, a father might during his lifetime bestow a gift of landed property upon a favorite son, so that after his death the favored one would have, in addition to an equal share with his brothers in the rest of the estate, the special gift of his father.[97] Technically, however, that was not preferred treatment in the inheritance, since the special portion was not treated as a share, but as a gift.[98]

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[93] J. Kohler and A. Ungnad, Hammurabi's Gesetz (Leipzig: Eduard Pfeiffer, 1909), III, no. 65.

[94] *Ibid.*, IV (1910), nos. 778, 782, 800-802.

[95] Matouš, "Les contrats de partage de Larsa provenant des archives d'Iddin-Amurrum," *ArOr*, XVII (1949), pt. 2, pp. 154, 159-168.

[96] Boyer, *ARM*, VIII, no. 1, pp. 2-5. The term *aplum* in this text seems to carry the sense of "first-born," *ibid.*, p. 181.

[97] CH, para. 165.

One paragraph of the code does state clearly a situation in which the eldest son was to be preferred in the inheritance over his brothers.[99] If a father had sons by his first wife and also by a slave woman, the sons of the first wife and of the slave woman would share equally in the division, except that the first-born of the first wife should receive a preferential share. It is possible that the special prerogatives of the eldest son got less emphasis in a city like Babylon than in other parts of Old Babylonia.[100]

The right of the first-born to a double share is clearly indicated in the documents from Nuzi. This is shown in simplest terms by a tablet wherein a father restores to sonship a son whose relationship he had previously annulled.[101] The restored son is declared to be the eldest and the recipient of a double share. The other sons are to receive the normal allotment.

Documents defining the settlement of property also apportion a preferential share to the first son.[102] Of the fields and other property outside Nuzi, the eldest son received a double share. The properties within the town were assigned in a way to favor the eldest son at an even greater proportion.

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[98] The term employed is *qištum*, not *zittum*.

[99] CH, para. 170.

[100] I. Mendelsohn, "On the Preferential Status of the Eldest Son," *BASOR*, no. 156 (Dec., 1959), p. 40. Mendelsohn overstates the case and goes beyond or against the evidence.

[101] Speiser, *AASOR*, X, No. 8, pp. 38, 39.

[102] *Ibid*., no. 21, pp. 53, 54; no. 19, pp. 49, 50.

The adoption tablets at Nuzi reflect the same observance. Certain texts show that the adopted son was assured one share in the inheritance; whereas if the adoptive parent should later have a son of his own, the natural son should receive a double portion.[103] The adopted son was protected by a clause prohibiting other adoptions, and he probably expected in some cases to be the sole heir. A most unusual case occurred when a man was given in adoption to his own brother;[104] he also was to have but one share, and any natural son was to be regarded as the elder and receive a double share. A tablet summarizing the division of property between two parties seems to imply the background of such an adoption, except that the clause giving preferment to a natural son must have been lacking, with the result that the adopted son received the double portion.[105]

The preferred son may be specified as the son of a wife favored over other wives. This has already been shown from the one paragraph in the Code of Hammurapi which deals with the preferment of an eldest son.[106] A very clear example of the same practice is observable from a tablet from Alalakh.[107] The tablet is a marriage contract in which a woman named Naidu is betrothed to a noble of Alalakh. In case Naidu does not bear a son, a second wife is specified for the noble. Should the second wife bear a son, and thereafter Naidu bears a son, the son of Naidu shall be the superior. Thus the status of the wife would give preference to her son over sons borne to the husband by another wife, even though they might have been born first.

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[103] Ibid., no. 1, p. 30; no. 2, pp. 31, 32.

[104] Ibid., no. 4, pp. 34, 35. It is likely that much of this complex pattern of adoptions was devised to avoid, when possible, the division of the family estate into such small plots that a person could not make a livelihood on one.

[105] Ibid., no. 18, pp. 48, 49.

[106] CH, para. 170.

[107] Wiseman, Alalakh Tablets, no. 92, pp. 54, 55.

Similar to this procedure was the practice of choosing a "first-born" (the principal heir) in disregard of primogeniture altogether. However one constructs the background of the above-mentioned Nuzi tablet,[108] it may be concluded that choice of a principal heir other than the first-born has taken place, either in the act recorded by the tablet, or by an act previous to it. The tablet records the restoration of a son to the status of sonship, the restored son being declared the eldest and entitled to a double share. It seems safe to conclude that one of two things occurred: (1) the restored son was the eldest, who had been removed from that favored position and replaced by another son, but was now returned to his former position; or (2) the restored man was an estranged son who was now not only returned to favor, but was elevated to the place of principal heir by the displacement of someone else.

It is possible that two examples of establishing a principal heir by choice rather than by primogeniture may be found in the Akkadian documents from Ugarit, but they are difficult of interpretation and cannot be used with any certainty.[109]

If the practice cannot be documented clearly from business and administrative texts, the mythological texts from Ugarit remove all doubt that the occasional passing over of the first-born in favor of another choice was known there. The idea that the first-born son normally inherited and succeeded his father is inherent in the words of Yṣb to Krt: "Descend from the kingship that I may be king, from thy sovereignty that I may be enthroned thereon." The eldest son appears ready to take possession of the whole property and turn all other members of the family out. The prospect terrifies the younger children of Krt who cry out: "Like a dog we shall go forth from your house, like a cur from the entrance of your court."[110] The rights of the younger children to lesser portions of inheritance appear jeopardized in this instance by the overly-ambitious assertions of Yṣb, who is bent on seizing the preferential share of the first-born, if not more.

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[108] Speiser, AASOR, X, no. 8, pp. 38, 39.

[109] PRU, III, no. 15.120, pp. 56, 57; no. 16.129, pp. 32, 33. Klima, ArOr, XXIV (1956), pp. 364-366, understands these texts to reflect the choice of a principal heir, but much has to be assumed in order to interpret them so. However, Klima's interpretation of the second document is to be preferred to the one proposed by Loren R. Fisher, "An Amarna Age Prodigal," JSS, III (1958), pp. 113-122.

The setting aside of the usual order had already been declared, however, by the god El at the marriage of Krt. El announced to Krt that his wife would bear him seven sons and seven daughters, and then he adds: "I will make the youngest of them the first-born."[111] The verbal form translated "I will make first-born" (*abkrn*) is cognate to the biblical Hebrew noun for first-born (*b*^{e}*kōr*), and confirms what was already understood from biblical usage, that the root may refer to the principal heir without reference to the order of generation. In the case of Krt's progeny the youngest of all his children was to become the first-born. The term translated "the youngest of them" introduces another problem which must be reserved for later discussion, i.e., the possibility of daughters being included in the inheritance. For the word (*ṣǵrthn*) indicates both by its feminine gender and its feminine suffix that the youngest of them in this case refers to the youngest daughter.[112]

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[110] C. H. Gordon, *Ugaritic Manual* (Rome: Pontificium Institutum Biblicum, 1955), text 127, lines 37, 38, p. 164; text 125, lines 15-27, p. 162. Cited by A. van Selms, *Marriage and Family Life in Ugaritic Literature* (Pretoria Oriental Series, I; London: Luzac and Company, 1954), p. 141.

[111] Gordon, *Ugaritic Manual*, text 128, Col. III, line 16, p. 165.

The Baʻal cycle also indicates that the main heir was sometimes other than the son born first. At the death of Ba'al, El cried to Asherah: "Hear, O Lady Asherah of the sea! Give one of thy sons that I may make him king!"[113]. The inference is that in Ugaritic society a husband could authorize his wife to choose the son who would be the principal heir. It is supported by one of the Akkadian documents from Ugarit[114] in which the Lady Bidawa is authorized by her husband to choose among their two sons the one to be the heir. After her husband's decease she is to enjoy the usufruct of the land for her own support and then designate as the heir the son who honors her most.

The biblical material furnishes examples to show that the custom of the preferential status of the eldest son was normally in force; but that in similar fashion to the practice in Nuzi and Ugarit, the eldest was sometimes displaced by a younger son. The patriarchal narrative does not richly document the practice, and a flat declaration that a double portion belonged to the first-born son does not appear except in a text which has to do with the settlement of the tribal lands after the conquest.[115] However, examples for the exception to the rule, the choice of a principal heir to displace the eldest son, are present; and of course, the one confirms the other.

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[112] Van Selms, *op*. *cit*., p. 141.

[113] Gordon, *Ugaritic Manual*, text 49, Col. I, lines 16-18, p. 137. Van Selms, *op*. *cit*., p. 139.

[114] Thureau-Dangin, *loc*. *cit*.

[115] Deut. 21:17.

The line-up of Jacob's sons remarked in Gen. 43:33 shows that they anticipated the inheritance ultimately to be according to the normal procedure with the eldest holding the preferred status. However, Gen. 49:3, 4 states that this order was set aside on account of the first-born's misdeeds, and a comment on the matter in I Chron. 5:1, 2 explains that the right of the first-born was conferred upon Joseph instead. Gen. 48:22 shows the bestowment of a specified piece of land upon Joseph over and above what is given to the others: "Moreover I have given to you rather than to your brothers one mountain slope which I took from the hand of the Amorites with my sword and with my bow."[116] The mountain slope most likely refers to Shechem, where Joseph himself was interred.

The sons of Joseph likewise experienced the younger replacing the elder in preferred status, and the text recording the incident makes it clear that this was contrary to the norm, for Joseph protested the action of Jacob on the basis that the elder should have the more prominent station.[117]

It is only when viewed in this way that Esau's sale of the birthright to Jacob[118] and the subsequent attainment by Jacob of Isaac's blessing through deceit[119] is to be understood. Jacob by these events had become the "first-born" in so far as inheritance and privileges were concerned, even though his father Isaac was much distressed over the outcome. Evidently Isaac's blessing had the force of an oath, and was not revocable.[120]

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[116] R. De Vaux, *La Sainte Bible*, *La Genèse*, p. 210. De Vaux sees in the term translated "mountain slope" (*šᵉḵem*) a specific reference to the town of Shechem, spelled in the Hebrew text the same way. He believes we have here a play on the word *šᵉḵem*, which also means shoulder, and that Jacob is depicted as presenting this property under the figure of the father of a family officiating at a sacrificial meal and distributing the parts of the animal victim. The shoulder as a choice piece would be a proper portion for the preferred son.

[117] Gen. 48:13-20.

[118] Gen. 25:29-34.

[119] Gen. 27.

Freedom to set aside the first-born by the choice of another son continued for a long time in Israel, and was still in force in David's time according to I Chron. 26:10.[121] David's own choice of Solomon to succeed him instead of an older brother is another case in point. The practice served therefore as a convenient figure to represent Israel's privileged relationship to Yahweh.[122] Although Israel was but a youth among the ancient civilizations which surrounded him, yet Yahweh had chosen him to occupy the position of first-born. The figure is also employed with respect to the choice of David and his line.[123]

The passage in Deut. 21:15-17 has been represented as a prohibition against the practice of setting aside the eldest son in favor of another,[124] but this is not necessarily so. The text prohibits the setting aside of the son of a wife who is hated in favor of the son of another wife who is loved. It does not deal with matters where the choice is based on reasons found in the sons themselves, or for other reasons not expressed. The text is therefore directed against such a situation as is reflected in the Alalakh Tablet[125] where in the marriage contract it is declared that if the woman Naidu has a son, he shall be the superior one even if previous to his birth the husband has taken another wife and she has borne him a son.

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[120] Gen. 27:33-35.

[121] Contrast II Chron. 21:3 where the normal procedure was followed.

[122] Exod. 4:22. Cf. Jer. 31:9.

[123] Psalm 89:28 (Hebrew text).

[124] Mendelsohn, op. cit., p. 38, 39.

[125] Wiseman, Alalakh Tablets, no. 92, pp. 54, 55. The distinction between this case and the preference of Isaac over Ishmael will be made clear later.

Inheritance by Adoption or Legitimization

Succession to property through adoption is treated only incidentally in the Code of Hammurapi. The code states that if a man has adopted a boy and reared him, then later has acquired children of his own, he may not cut the adopted boy off totally without inheritance. He must give him a one-third patrimony of his moveable goods and send him away, but he is not required to give him anything from the real estate.[126]

There were many cases, however, in which there was evidently no desire on the part of the adopting party to disinherit the adopted, so that succession through adoption was a regular means of conveying property. While there was no such thing as testate succession in the strictest sense in the time of Hammurapi, the same object could be obtained to a large extent by means of adoption, so that an outsider could inherit a portion of an estate along with the natural sons of the father.[127]

In the contracts of adoption from Babylonia of the Hammurapi era, the adopting person transmits his property to the adopted one, who is then obliged to provide for the needs of the adopting one during his life or to deliver each year a rent of a determined quota. One such tablet shows a woman adopting her slave as her son and bestowing upon him all her property, present and future, on condition that he provide for her while she lives. At the same time she gives to him in marriage a slave whom she enfranchises. The two of them must provide for her upkeep as long as she lives.[128]

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[126] CH, para. 191.

[127] Driver and Miles, Babylonian Laws, I, p. 343.

The form of such adoption tablets conforms generally to a standard which includes sanctions against either party who might break the relationship. Thus, if the adopted should deny his adoptive father or mother, they may make a mark on him, bind him and sell him for money. If the adoptive father or mother should deny the adopted, they must abandon to the adopted all the moveable and immovable property.[129]

In general this method of conveying property was resorted to by those who had no children of their own to care for them, and who sought to insure for themselves by this means a sustenance in their old age. Only one such tablet from Mari has thus far been published, but it is regular except for the one unusual feature that it guarantees to the adopted one a double share should other sons be acquired later.[130]

The type of adoption practiced at Nuzi for this purpose has been classified as a contract of "life annuity."[131] Just as in the Babylonian documents, the adopting party conferred his property upon the adopted one who, in return, was obliged to serve the adoptive parent and to furnish lodging and food. When the adopting party died, the adopted must mourn for him and give him burial. The ilku, however, was carried by the adopting party. There are, of course, variations in the conditions imposed on the adopted person.[132]

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[128] CT, VI, 37a, cited by Cuq, op. cit., p. 56.

[129] Ibid., p. 54.

[130] Boyer, ARM, VIII, pp. 2, 3.

[131] E. M. Cassin, L'Adoption a Nuzi (Paris: A. Maisonneuve, 1938), p. 36.

[132] Speiser, op. cit., no. 6, p. 37; no. 5, p. 36. In the second

The institution of adoption in order to convey property was practiced also in Alalakh. A single document, while possessing some strange and puzzling features, indicates that the practice existed there.[133]

The few adoption tablets among the Akkadian documents at Ugarit indicate that the institution of inheritance through adoption was active, but different in some ways from that of Mesopotamia. The penalties for breaking the relationship do not seem to be so severe as in Babylonia. One text imposes a heavy fine on the adoptive parent for bringing to an end the relationship, whereas the adopted one simply forfeits the inheritance and leaves the house if he decides to end the relationship; he is not otherwise punished.[134] The wife of the adopting person is not a party to the adoption and does not assume the position of adoptive mother. The tablet does not create a life interest in the property for her in the event of her widowhood; the adopted heir can send her from the household by returning to her the silver which she had brought into her husband's house from the house of her father. The document also fails to protect the inheritance rights of the adopted against reduction through later adoptions.

There is a case in which a man adopted the son of his daughter, making him the heir of all his moveable and immoveable property.[135] The

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of these, the adopted person seems really to be Shushiya, but the adopting party has protected for the wife of his master the usufruct of the property for as long as she lives.

[133] Wiseman, Alalakh Tablets, no. 16, pp. 39, 40.

[134] PRU, III, no. 15.92, pp. 54-56. See the commentary by Boyer in the same volume, p. 303, and Klima, ArOr, XXIV, p. 368ff. Cf. PRU, III, no. 16.344, p. 75. This is an adoption into brotherhood, but the conditions for dissolving the relationship are the same.

[135] PRU, III, no. 16.295, pp. 70, 71.

grandfather also paid a sizeable fee to the royal treasury in order to obtain the intervention of the king in the act and thus secure an incontestable title for the adopted son. The text lacks the clauses establishing an obligation of support, reserving the usufruct of the property to the adopting father, instituting joint occupancy, and imposing fines against the dissolution of the relationship, such as are generally found in adoptions made to provide an heir. The absence of these clauses indicates that the action was taken in anticipation of death rather than to establish any security for the adopting party. The adoption took place in order to make the grandson the exclusive heir; for without this action the young man could not have been the heir of his maternal grandfather.[136]

A biblical text also furnishes us an example of a grandfather adopting his grandson, or rather, grandsons, and instituting them as heirs; but in this case they are sons of his son, not of a daughter. Gen. 48:5, 6 indicates that when Joseph presented his two sons to the aged Jacob, the latter adopted them as his own:

> And now your two sons, who were born to you in the land of Egypt before I came to you in Egypt, are mine; Ephraim and Manasseh shall be mine, as Reuben and Simeon are. And the offspring born to you after them shall be yours; they shall be called by the name of their brothers in their inheritance.

Jacob claimed Ephraim and Manasseh exclusively; any other offspring should be reckoned to Joseph and should succeed Ephraim and Manasseh in the inheritance. The passage is intended by the narrator to explain why the two sons of Joseph are reckoned among the sons of Jacob as heads of tribes.[137] The reference in 48:12 to Joseph's receiving the two sons again from the knees of Jacob also indicates that a legal rite of adoption has taken place.[138]

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[136] Boyer, PRU, III, p. 303. Klima, ArOr, XXIV, p. 368. It is possible that the law in Exod. 21:1-6 concerning the Hebrew slave had the effect of making possible succession through the female line.

Jacob's solemn declaration "your two sons . . . are mine; Ephraim and Manasseh shall be mine," is comparable to the adoption formula expressed in Babylonia, and is almost word for word like the terms used in the Code of Hammurapi in describing the action by which a man legitimated sons borne by a slave woman. He merely said, "(you are) my sons" and they were thereafter treated on an equality with the sons of his wife in the division of the paternal estate.[139] In this connection Jacob said of Joseph's sons, "they shall be mine as Reuben and Simeon are." That is to say, they shall be treated on an equality with the sons of his first wife, Leah.

A third parallel to the Hammurapi Code in Jacob's adoption of Joseph's sons occurs in his blessing of the two boys: ". . . and in them let my name be perpetuated. . . ."[140] The Code of Hammurapi refers to the action in which a man adopts a boy "in his name."[141] The Babylonian term translated "in his name" (_ina_ _mēšu_) means that the adopter has bestowed his own name upon the adopted son and that the latter will henceforth be known as the son of the adopter.[142] This was historically realized in the cases of Ephraim and Manasseh, for it was as the sons of Jacob that they held their places as the heads of tribes.

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[137] De Vaux, _La Genèse_, p. 207, note d. Gerhard von Rad, _Genesis, A Commentary_, trans. John Marks (Philadelphia: Westminster Press, 1961); p. 408.

[138] Cf. Gen. 30:3. De Vaux, _op. cit._, p. 209, note a. Von Rad, _op. cit._, p. 410.

[139] I. Mendelsohn, "A Ugaritic Parallel to the Adoption of Ephraim and Manasseh," _IEJ_, IX (1959) p. 180. CH, para. 170.

[140] Gen. 48:16.

[141] CH, para. 185.

Interestingly enough, Joseph adopted his great-grandchildren, the sons of Machir, in much the same way that his children had been adopted by Jacob.[143]

Another case of adoption in the patriarchal narratives involving inheritance had to do with a slave. Abraham complained that he had no offspring of his own and that a slave would be his heir. Bypassing the textual problems of Gen. 15:2, which many have proclaimed insuperable,[144] the following verse makes clear that Abraham had as yet no descendants and that a slave (*ben* *bêtî*)[145] would be the one to inherit his property. The situation implies that Abraham had adopted his slave at some previous time and made him heir in default of sons. The following verses contain the promise that a real son, the fruit of his own body, would succeed to his property. The case is analogous to those among the Nuzi documents[146] in which the adopted person is made the heir subject to the reservation that if a real son should be born to the married couple, he should be the principal heir, and not the adopted son.[147]

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[142] Mendelsohn, "A Ugaritic Parallel to the Adoption of Ephraim and Manasseh," *IEJ*, IX (1959) p. 180, 181.

[143] Gen. 50:23.

[144] De Vaux, *La Genèse*, p. 82, note a.; Von Rad, *op*. *cit*., p. 178.

[145] Eccles. 2:7 uses the idiom to refer to slaves born in the house. The Revised Standard Version translates the expression in Gen. 15:3, "a slave born in my house."

[146] Speiser, *op*. *cit*., nos. 1, 2, and 4, pp. 30-32, 34, 35.

[147] Cyrus H. Gordon, *The Living Past* (New York: The John Day Co., 1941), p. 176. Von Rad, *op*. *cit*., p. 179. Reservations on the viewpoint that Abraham adopted his *servant* are expressed by R. De Vaux, *Les*

The relation of Jacob to Laban (Gen. 29-31) was probably not that of an adopted son, as some have thought;[148] Jacob's claim to certain moveable property (and his wives) was on a different basis.[149]

Legitimization of a natural son had the same practical effect as the adoption of an outsider. According to the Code of Hammurapi,[150] if a man ever said "My children!" to the offspring borne to him by a slave woman (thus counting them with the children of his wife), after his death all the children of his slave and of his wife should share equally in the inheritance, except that the first-born of the wife should receive a preferential share. If, on the other hand, the father had never said during his lifetime "My children!" to the offspring of his slave woman, the children of the slave were not to share in the paternal

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Institutions de l'Ancien Testament (Paris: Les Éditions du Cerf, 1958), Vol. I, p. 86.

[148] C. H. Gordon, "The Story of Jacob and Laban in the Light of the Nuzi Tablets," *BASOR*, no. 66 (Apr., 1937), pp. 25-27. Gordon thinks that Jacob's marriages to Leah and Rachel were *erēbu* marriages, and that Jacob became at the same time the adopted son of Laban and consequently an heir. He adduces a Nuzi document in which a man is adopted and at the same time given a daughter in marriage. The adopted person's inheritance rights are defined in relation to any possible natural sons which the adopting party might beget in the future. Gordon regards the Nuzi document and the biblical story as parallels. The Nuzi document was published by C. J. Gadd, *RA*, XXIII (1926), pp. 126, 127, 155. E. Neufeld, "Errēbu Marriage Amongst the Semites and Amongst the Hittites," *ArOr*, XVIII (1950), pt. 3, p. 125, also regards Jacob's marriages as *erēbu* marriages.

[149] Jacob appears to have regarded his fourteen years of service to Laban as the equivalent to the *mōhar* (bride-price). He felt entitled to the property he claimed on the basis of a contract which he had with Laban for his services subsequent to the fourteen years (Gen. 30:25-34). Laban viewed the whole matter differently. He evidently regarded Jacob's service as that of a slave, and since his wives were given to him in his bondage he had no claim to them or their offspring if he were to go free (Cf. Exod. 21:1-4). Jacob's stay beyond the fourteen years may have been regarded by Laban as an acceptance of perpetual servitude, even lacking the ritual act which would bind the slave indefinitely (Exod. 21:5, 6).

[150] CH, paras. 170, 171.

estate, but the slave woman and her children were to be set free upon the death of the husband, and the children of the wife should have no claim upon them. Thus both the process and result of legitimizing the child of one's own slave was equivalent to the adoption of another man's son.[151]

In the patriarchal stories the same principle appears to apply in the treatment of the offspring of Abraham's concubines. The sons of Keturah borne to Abraham are clearly treated in a way consistent with the Babylonian custom. Abraham is said to have given all that he had to Isaac, but to the sons of his concubines he gave gifts and sent them away to the east country so that they would not be near to endanger Isaac's inheritance.[152]

The case involving Ishmael is more complicated, but the final outcome is about the same. Hagar, the mother of Ishmael, was the slave of Sarah, Abraham's wife. Hagar bore Ishmael while Sarah was yet barren,[153] and it appeared that Ishmael would be Abraham's heir. In the course of time Sarah bore Isaac, and then she became concerned that Isaac's unqualified right to the inheritance be preserved. Fearing lest the presence of Ishmael in the household in some way diminish Isaac's claim, she insisted on the expulsion of Ishmael: "Cast out this slave woman with her son; for the son of this slave woman shall not be heir with my son Isaac."[154] While the action of Sarah has been regarded as unduly harsh, there was at least compliance with the custom that called for setting free a female slave who had borne children to her master.

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[151] Driver and Miles, Babylonian Laws, p. 351.

[152] Gen. 25:5, 6.

[153] Gen. 16.

[154] Gen. 21:10

Sarah may perhaps be charged with a bit of hypocrisy in this event however, since it may be maintained from Gen. 16:2 f. that Sarah had given the impression that any children from Hagar would be recognized as her own.[155] That she had intended it so is clear from Gen. 30:3-13, which relates that both the wives of Jacob had given their slaves to their husband that they might obtain children reckoned to themselves. When the slaves did bear, the children were treated as belonging to the mistress of the respective slave, who assumed the responsibility of naming the children. In the so-called blessing of Jacob recorded in Gen. 49, the sons of the handmaidens are treated on an equality with the sons of the wives. But with respect to the child borne by Hagar things were different. Before the child was born Sarah had reason to repent of having given Hagar to Abraham, hence Sarah never regarded Ishmael as her own. Abraham, on the other hand, shows willingness to have recognized Ishmael as his son, thus constituting him as heir. According to Gen. 17, faced with the staggering promise that he and Sarah should be the progenitors of a multitude of people, he proposes instead that Ishmael be accepted as his son: "Oh that Ishmael might live in thy sight."[156] The suggestion was rejected, however and the assurance restated that Sarah herself should bear a son. Since Ishmael was not legitimatized, in the course of time, and after the birth of Isaac, he was expelled, as Sarah insisted.

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[155] De Vaux, Les institutions de l'Ancien Testament, I, p. 90: "Mais Sara feint d'oublier qu'elle a déclaré que les enfants d'Agar seraient reconnus comme siens."

[156] Gen. 17:18.

Inheritance Rights of Daughters

Succession of daughters to landed property is a subject obscured somewhat by the ambiguity of the terms for sons (marū) and for brothers (aḫḫū) in the Babylonian documents, similar in this matter to the Hebrew term for sons (bānîm). It is possible that in some cases when these terms were used daughters were included, and that they should be translated with a word like children.[157]

The custom in early southern Mesopotamia probably was that daughters did not succeed to the paternal estate except in default of sons. A statue of Gudea is engraved with an inscription which makes this exception to the otherwise general rule that daughters do not inherit property.[158]

The Code of Hammurapi does not refer to this exception, and takes no notice of the situation where a household has no sons but only daughters. The reason for this is doubtless because the condition was not likely to occur, since a man whose wife bore him no sons could acquire one by other means. He might obtain one through a slave-woman of the household and legitimatize him, as discussed above; or he could simply adopt another man's son and constitute him as heir in exchange for services.

While the property of a household was normally divided among the sons only, it was possible according to Babylonian law for a father in his lifetime to designate some of his property for the support of a daughter. If the daughter were a nun, a hierodule, or a votary, the father in presenting the gift to her could write for her a sealed document granting her the discretion to place the management of the property after his death in the hands of whomever she might choose, with her brothers having no claim against her.[159] Upon her death, however, the property belonged to her brothers.

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[157] See Driver and Miles, Babylonian Laws, I, pp. 338-341.

[158] P. Maurus Witzel, Gudea Inscriptiones: Statuae A-L. Cylindri A and B (Roma: Pontificium Institutum Biblicum, 1932), Statue B, Col. VII, ll. 44-46, pp. 3, 4. F. Thureau-Dangin, RA, X (1913), p. 96, gives the text in transliteration and translation.

Lacking this specific written permission of freedom of management, such property as these women might inherit was held with certain restrictions. Evidently an unmarried woman, such as a nun, a hierodule, or votary, was given a portion equivalent to her brothers in the inheritance. However, the field or orchard which might be designated for her was taken over by her brothers and administered in her behalf, the products going to her support. Actually therefore, what she obtained was the usufruct of one portion for as long as she lived, but she was not free to dispose of it, and ultimately it reverted to her brothers.[160]

Some of the documents of the first dynasty of Babylon show that unmarried daughters occasionally received a share in the father's estate.[161] Most of these cases must have arisen when the father died before the daughter was of marriageable age, since a daughter about to be married normally received her share of the estate at that time in the form of a dowry (*šeriktum*). It is probable therefore that a daughter was entitled to receive either a dowry or a share (*zittum*) from the father's estate. If the unmarried daughter married after receiving her share, it would presumably serve as her dowry.[162] Paragraph 184 of the Code of Hammurapi seems to imply the same.

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[159] CH, para. 179.

[160] CH, para. 178. Rivkah Harris, "The *naditu* Laws of the Code of Hammurapi in Praxis," *Orientalia*, XXX (1961), p. 163 ff., shows that documents from Sippar generally reflect an observance of the laws of CH, paras. 178 and 179, in so far as the *naditu* women were concerned.

[161] Kohler and Ungnad, *op. cit.*, III, nos. 43, 49, 51, 52, 53, 76, 489. Cited by Driver and Miles, *Babylonian Laws*, I, p. 337.

According to the provisions of the Hammurapi Code, the married daughter, having received her dowry from her father's estate, held possession of it, but owned it only in a limited sense. During her marriage her husband administered the property for her, and her brothers or her sons, to whom the possession would pass on her death, had a present interest in it during her lifetime. She could not sell it or dispose of it otherwise. If she should die without having borne sons, the property reverted to her father or her brothers, and her husband had no claim upon it. The husband could, however, reclaim the marriage-price (tirḫatum) from the father's house.[163]

When a woman was widowed, her dowry along with her marriage-gift (nudunnum) was guaranteed to her, and her sons administered her property for her, delivering to her the products thereof. If there had been no marriage-gift, a portion of her husband's estate equivalent to that of an individual heir was assigned for her support, along with her dowry. Should the widow decide to remarry, she could take her dowry with her to her new home, but any property held by her from her former husband's estate must remain to be inherited by her sons. In the event of her death, her dowry was to be divided among the sons of both marriages.[164] If a widow had not produced any sons, her brothers administered her dowry for her, supporting her with its proceeds, and eventually inheriting the property.[165]

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[162] Ibid., pp. 336, 338, n. 2.

[163] CH, paras. 163, 164. Driver and Miles, Babylonian Laws, I, p. 352.

[164] CH, paras. 171, 172, 173. Driver and Miles, Babylonian Laws, I, p. 351 ff.

From the technical viewpoint of the code therefore, daughters did not inherit land in the Hammurapi period. They were assigned certain properties of which they enjoyed the usufruct, but the actual heirs were their brothers or their sons, as the case might be.

The size of a family's land was often diminished none-the-less, by the fact that a woman's dowry, appointed to her out of her father's estate, was inherited by her sons. However, that loss could generally be compensated by the bride price, as well as through the marriages of her brothers, whose sons succeeded to the dowries of their mothers.[166] Incidentally, one can hereby see why a father who had only daughters would find it to his advantage to arrange for *erēbu* marriages for his daughters, in which he adopted his sons-in-law.

The pertinent material from Ugarit concerning women's inheritance rights is hard to assess, since it is so sketchy, but the practice there appears similar to the regulations of the Hammurapi Code. A well-known contract leaves the property of Yarimanu to his wife Bidawa.[167] Bidawa is given the option of bestowing the property upon the one of her two sons who honors her most, but there is no provision for her to alienate the property outside the family. This is therefore a parallel to paragraph 150 in the Code of Hammurapi. The woman had the usufruct of the land for as long as she lived and freedom to bestow it upon the son of her choice.

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[165] *Ibid*., pp. 352, 353.

[166] *Ibid*., p. 377.

[167] Thureau-Dangin, "Trois Contrats de Ras-Shamra," *Syria* XVIII (1937), pp. 246, 249, 250.

Another tablet records that a woman accepted the "house" (perhaps a general term for property) of her father to serve as her dowry (terḫatu).[168] Although the text is damaged, it seems a safe conclusion that she received the house from the heir of her father and that through the payment of this dowry the woman got her share along with her brother, or brothers.[169] Lacking any evidence to the contrary, however, it may be assumed that she enjoyed merely the usufruct of the property, which ultimately would devolve to her brothers.

In another text[170] a woman left her property to a son and a daughter, and debarred the other children from making a claim to it. It is probable that the daughter's part was only a life interest which would finally go either to her sons, or to her brother.[171]

One Alalakh tablet has some bearing on this question.[172] The text records a lawsuit between a brother and a sister over the property of the wife of Ammurabi. Apparently the brother had tried to take over all the property, claiming that his sister had no right to any of it. The sister brought suit against him before King Niqmepa asserting her claim to a share in the house. Niqmepa decided in favor of the sister, permitting the brother first choice in the division of the property, but establishing the right of the sister to her portion, with a penalty against anyone making a claim against it. On the surface this appears as though a woman might inherit land in Alalakh, but again, she may have had no freedom to dispose of her land, but enjoyed the usufruct of it for life. Her brother or her sons would ultimately inherit it.

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[168] PRU, III, no. 16.158, p. 62. See Boyer's commentary in the same volume, p. 301, where the term terḫatu is distinguished in its usage in Ugarit from that in Babylonia.

[169] Klima, "Untersuchungen zum Ugaritischen Erbrecht," ArOr, XXIV (1956), p. 366.

[170] PRU, III, no. 16.252, p. 66.

[171] Compare the Nuzi documents which indicate that property left to women was to go to a brother upon death. Speiser, op. cit., no. 3, pp. 33, 34; no. 19, pp. 49, 50.

[172] Wiseman, Alalakh Tablets, no. 7, pp. 34, 35.

The patriarchal narratives themselves do not contain any cases in which women are referred to as sharing in an inheritance. The first such case is that of the daughters of Zelophahad, who were permitted to inherit property since they had no brothers to whom the land should go.[173] The concession was not an innovation, however, since a precedent for such a procedure was known in Mesopotamia at Lagash in the Ur III period, mentioned above.[174]

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[173] Num. 27:1-11; 36:6-9. The effect was the same as the law of the Hebrew slave (Exod. 21:1-6) in making possible succession through the female line.

[174] P. 44.

CHAPTER II

PERIOD OF TRIBAL CONFEDERACY

Possession in the Tribal Framework

Canaanite and Israelite Systems Co-existent

When the Israelites began the seizure of land west of the Jordan River, they were almost immediately successful in certain areas where the geography and the social conditions[1] played into their hands. They took control of the central hill country as far north as the valley of Jezreel, and in the south they held the highlands settled by Judah. In other places their possession was far less secure. The Book of Judges makes it clear that the battles recorded in Joshua did not result in complete and unqualified victory for Israel, enabling them to possess the whole country at will. Many of the fortified Canaanite city-states, possessing a superior technology in warfare (Jud. 1:19), managed to sustain themselves. These were mostly in the plains and the valleys, but some well-defended cities in the hills also held out. Israel did seize Hebron, Kirjath-sepher, Zephath, Bethel, and at a later time, Laish.[2] Shechem, although it was situated in the plain and was a well-defended city with massive fortifications, yet ultimately came under the full control of the Israelites (Jud. 9). Doubtless the geographic situation aided the Israelites in this case also, since Shechem could be more easily isolated from the other fortified cities.

There were, however, numerous cities of the Canaanites which continued their own way of life independent of the Israelites for a part or all of the period of the Judges. Beth-shean, Taanach, Dor, Ibleam and Megiddo dwelt adjacent to the territory claimed by Manasseh (Jud. 1:27), and among the other regions there were the following Canaanite cities: Gezer (1:29), Kitron and Nahalol (1:30), Acco, Zidon, Ahlab, Achzib, Helbah, Aphik, and Rehob (1:31), Beth-shemesh and Beth-anath (1:33), Heres, Aijalon, and Shaalbim (1:34, 35).

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[1] G. E. Mendenhall, "The Hebrew Conquest of Palestine," BA, XXV, no. 3 (1962), p. 83.

[2] Jud. 1:10, 1:11-15; 1:17, 1:22-26; 18:27.

According to the texts just cited, the Israelites must have been much more numerous and secure in the central regions and considerably less so in the north; for of the central regions the texts remark that the Canaanites dwelt among the Israelites (1:27, 29), but in the north the Israelites are said to dwell among the Canaanites, who are the inhabitants of the land (1:32, 33).

Hazor, the immense stronghold of the north, persisted as a great Canaanite city until well into the period of the Judges (Jud. 4). Gibeon, which lay in the hill country just about four miles north-west of Jerusalem, remained an unassimilated Canaanite town even in the days of King David (II Sam. 21:2). Jerusalem itself, as is well known, did not fall to the Israelites until David conquered the city and made it his capital.

The archaeology of Palestine tends to confirm the picture drawn above from the biblical text. The tells in the plains show the characteristic features of a regular city state. Many show by their sherds that they go back to the Middle Bronze age in the first half of the second millennium B. C. In the hill country, on the other hand, the tells are fewer, and the oldest of their ruins are in most cases from the late bronze and early iron periods, i. e., the second half of the second millennium.[3] The highlands may have been well settled before

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[3] Albrecht Alt, "Die Landnahme der Israeliten in Palästina," Kleine Schriften zur Geschichte des Volkes Israel (München: C. H. Beck'sche Verlagsbuchhandlung, 1953), I, 112. John Bright, A History of Israel (London: SCM Press, 1960), p. 109.

Israel seized them, but there were fewer walled towns, and the settlements must have been of a less permanent quality. The Israelites therefore found it much easier to appropriate the hill country. It was during the period of the Judges and the early monarchy that for the first time in history the hill country became dotted with towns.[4]

The Israelites in Palestine met with a social and economic system in which much of the land was already held in private, and permanently alienable, just as it was in the patriarchal period earlier described, the Canaanite cities carrying on the long established traditions. There were also great estates owned by nobles and worked by tenants or slaves, and there was doubtless land given in fief by Canaanite kings to those whom they favored. The Canaanite cities of Palestine probably maintained the same practices with respect to land tenure that can be observed in Ugarit and Alalakh. In those places there was not only permanent alienation of land, as already noticed, but great land-owners displayed great accumulations of wealth and power in being able to buy and sell whole villages; and the king gave extensive grants of fief land to his administrators and officials.[5] The Israelites instituted a system completely at odds with the practices of the city-states, in that land was not to be permanently alienated, and ultimate power over the land did not rest with the state, but with Yahweh, who was their king.

The Israelites showed a strong aversion to the idea of permanent land sales, sharing an attitude displayed by some other social groups in later times. Somewhat analogous is the experience of English settlers in Australia who bought land from the Aborigines. After a given real estate transaction was concluded by payment of the agreed price, the natives would later on return with newborn babes, demanding that every child coming into the world after the sale should also be paid for his right, or share, in the land.[6] As will be discussed later, Israel felt that no matter what financial reverses a man might suffer, his land was still in some way identified with him and his descendants.

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[4] Wright, "Archaeological Observations on the Period of the Judges and the Early Monarchy" JBL, LX (1941), p. 41.

[5] Wiseman, Alalakh Tablets, texts 52-58. PRU, III, no. 16.239, p. 79-81; no. 15.140, p. 135; and others. These practices will be discussed in much more detail in the chapter on the monarchy.

The Canaanite landed aristocrats were called *baʿalîm*. Josh. 24:11 refers to the proprietors of Jericho by this term, the same class in Moab is mentioned in Num. 21:28; so too are the landowners of Shechem in Jud. 9. The Israelites applied this term to themselves in the course of time, but seemingly not in the early part of their settlement in the land. While the Canaanite lords are called *baʿalîm* numerous times in Jud. 9, the preceding and following narratives refer to the men of Israel as *'ᵃnāšîm*, *zāqēn* or *'aḏôn*. These differences in the vocabulary may indicate an awareness of a pre-Hebrew, Canaanite landed aristocracy to be distinquished from the Israelite element which had taken over the central highlands.[7]

Before Israel settled in Canaan the term *baʿalim* also signified the local gods. Possibly, as has been suggested, these gods, thought of as divine proprietors, were looked upon as authenticating and validating the whole range of economic and social relationships existing among the Canaanites, whose civilization was based on the concept of private ownership of property. While the *baʿalîm* were worshipped as the gods of good crops, their main function was to guarantee and legitimize the commercialistic regime of private property in land, slaves, cattle, merchandise, and so forth, which had come to center in the walled cities,[8] or, at least, the political regime which supported it. If this be so, the Canaanite concept of deity was a matter of "vertical transference," the local proprietors having projected the pattern of their own society into the heavens, which, in turn, justified the perpetuation of the existing order.

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[6] Louis Wallis, *God and the Social Process* (Chicago: University of Chicago Press, 1935), pp. 72, 73.

[7] Louis Wallis, *The Bible is Human* (New York: Columbia University Press, 1942), p. 61. It does not follow that Wallis is correct in maintaining that the term *baʿal* is not a native Hebrew word, but that it was borrowed from the Canaanites; *ibid*., p. 29. The usage of the terms referred to above only acknowledges the historical fact that Israel had no *baʿalîm* (landed aristocracy) until a process of assimilation to Canaanite culture had set in.

It is clear that according to this viewpoint the religion and the socio-economic system complemented and supported one another, and any assimilation of Israel to Canaanite religion involved the former in conflicts with their own socio-economic system. However, some Israelites evidently failed to see the dangers in the local *baʿal* cults, and may have simply identified their functions with those of Yahweh. Their religious syncretism[9] therefore does not imply acceptance of the Canaanite land-tenure system at that time.

The Israelites, who operated on a basis of equality among themselves within the tribe, firmly rejected the system which favored the aristocracy at the expense of the small farmers. The conquest of

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[8] So Wallis, *God and the Social Process*, p. 10. He states that all contracts among the Canaanites were legalized by oaths in the name of *baʿal*. It is a likely inference, but no evidence is presented.

[9] There is no justification for maintaining that there was no real assimilation of Israel to Canaanite religion in the period of the Judges, as does Wallis in *The Bible Is Human*, p. 83. His view is against the evidence in numerous places in the Book of Judges. See esp. chapt. 18. It is arbitrary to throw out as the libelous work of redactors every reference to religious synchretism in the Book of Judges.

Palestine by Israel resulted in a displacement of the Canaanite proprietors in those areas where they could not be adequately defended by the walled cities of the plain, and the establishment of a radically different kind of tenure yet to be described.

As noted above, Israel's successes in the central region were in general confined to the hill country, where Shechem remained for a time as a fortified Canaanite city. The ninth chapter of Judges may be viewed as an attempt by the Shechemites to reverse the effect of those successes and to institute a rule of the Canaanite *ba'alîm* (landed proprietors) over the free men of Israel, by using the services of the treacherous Abimelech. For a time the effort was successful, but the geography of the region played into the hands of the Israelites, who ambushed the city and destroyed it. In this chapter the Shechemite lords are sixteen times referred to as *ba'alîm*, and once they are distinguished from the *'^{a}nāšîm* (Jud. 9:51).

When Israel moved into the highlands and established a radically different system of land tenure adjacent to the long-entrenched system of the Canaanites, they doubtless attracted to their number many of the disaffected native peasantry who had been oppressed by the Canaanite proprietors. How much of this occurred is of course uncertain, but it may well be that many of the people included in the covenant of Josh. 24:14-25, prepared to engage enthusiastically in the overthrow of their old landlords and the establishment of the new system, thereby entered the community for the first time.

Israelite Tenure by Tribe and Family

The Israelites, augmented by the disaffected native peasants,[10] maintained a tribal organization, the tribes serving as administrative units for both military and religious purposes. Throughout the period of the Judges the tribes, not always acting concertedly (Jud. 5) constituted the means of offense as well as defense against the Canaanite city-states. In the appropriation of the land the tribes naturally became territorial in character,[11] with the villages constituting subsections of the tribe. The villages were often identified as clans in the tribal organization.[12]

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[10] Mendenhall, "The Hebrew Conquest of Palestine," *BA*, XXV (1962), pp. 81, 83. Bright, *op*. *cit*., pp. 121-123, gives an excellent summary

The land appropriated by the expanding tribes was distributed within the tribes by families, each family being allotted a section. According to Num. 26:53, 54, the distribution was supposed to be made equitably, the size of the allotment being determined by the size of the family. The location of the various allotments within the tribal districts, however, was to be decided by lot.[13]

The land held by the Israelites is referred to under three different terms. The most general term is *yᵉrušāh*, which refers to property however acquired, whether by inheritance or by dispossessing the former owner; the word derives from the verb *yāraš*, which means to take possession, oftentimes by force. Another rather general term is *'ᵃḥuzzāh*,

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of the various sources by which Israel's numbers were increased.

[11] The territorial character of the tribes has caused some scholars to insist that the tribes were not really constituted until after the settlement in Canaan. See Martin Noth, *The History of Israel* (New York: Harper and Brothers, 1958), pp. 53, 72.

[12] Shechem, Tirzah, and Hepher are Canaanite cities taken over by Israel, and yet they are listed in Josh. 17:2, 3 as families of Manasseh receiving allotments of land. Bright, *op. cit.*, p. 122.

[13] Num. 26:55, 56; 33:54; 34:13; Josh. 18:6.

often translated "possession;" perhaps it is nearly equivalent to "freehold."[14]

The more specific and more frequently employed term is *nāḥᵃlāh*, which refers to apportioned or allotted land, and has no convenient English equivalent.[15] The verbal root from which it derives is employed in the hiphil stem to refer to the apportioning of land.[16] The qal and piel stems of this root mean to receive land as apportioned.[17] These latter forms cannot with precision be translated "to inherit," since Deut. 21:16 anticipates that the apportionment will be made during the father's lifetime. While the land apportioned was called *nāḥᵃlāh*, the individual parts into which it was divided were each called a *ḥēleq*, meaning a share. There are of course cases in which the two nouns stand in parallel to each other and are synonymous.

The view is often expressed that although the tribal land was apportioned to individual families, the whole area none the less remained common property of the tribe, and was redivided by lot periodically, or when the occasion demanded,[18] such as after the septennial year of fallow.[19] There must have been, however, grazing ground which the village community maintained as common ground and which was not apportioned at all.[20] Or it may be that the villages also kept some arable land as common land and periodically allotted portions of it to families capable of farming them.[21]

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[14] So R. H. Kennett, *Ancient Hebrew Social Life and Custom as Indicated in Law Narrative and Metaphor* (The Schweich Lectures of the British Academy, 1931; London: Oxford University Press, 1933), pp. 73-76.

[15] *Ibid*.

[16] Deut. 1:38; 19:3; 31:7; Josh. 1:6.

[17] Exod. 23:30; 32:13; Num. 18:20; Deut. 19:14.

[18] Kennett, *loc. cit*. K. H. Henry, "Land Tenure in the Old Testament," *PEQ*, (1954), pp. 5-15.

[19] So Kennett, *loc. cit*.

That some common land existed which was on occasion allotted or reallotted may perhaps be allowed, although there seems to be no clear demonstration of it.[22] But the idea that all tribal land was subject to occasional reapportionment must be rejected. The Book of the Covenant (Exod. 21-23) appears to reflect a situation in which every man was the owner of his own property. Already the possessor of land held a permanent and fixed area, and evidently obtained a "customary and heritable right" to hold it (Exod. 23:10).[23] Exod. 22:5 seems to presuppose individual land ownership as self-evident. The permanence of the naḥ^alāh appears from Deut. 19:14, which prohibits the removal of landmarks set by men of old.

It is important to stress that the economy of the period of the Judges was not a nomadic or semi-nomadic one, but that agriculture was quite important. The Hebrew landholder was a member of a settled, agriculturally advanced society which had an economic standard as well as an internal tribal organization that fit closely into the highest or most advanced agricultural grade.[24]

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[20] Cf. the commons in contemporary England.

[21] Edward Neufeld, "The Emergence of a Royal-Urban Society in Ancient Israel," HUCA, XXXI (1960), p. 32. Pirenne, op. cit., AHDO, V (1950, 51), p. 40.

[22] The term migrāš does appear to refer to common land. Its usage is confined almost solely to reference to the Levites (Lev. 25:34 and elsewhere). I Chron. 5:16 uses it to refer to pasture land in Transjordan.

[23] Neufeld, "The Emergence of a Royal-Urban Society in Ancient Israel," HUCA, XXXI, p. 33.

Parallels to Tenure by Tribe and Family

Mari

The closest resemblance to this biblical pattern appears in the juridic texts from Mari. One text documents the apportionment of one hundred fifty *īku* of field by thirteen men who are the sons of Awin to a man named Yarim-Adad, also a son of Awin.[25] The sons of Awin appear to be the members of a social group, clan, or tribe which owned collectively a tract of land from which they apportioned the field.

The thirteen men who apportion this land are arranged into two groups; members of the first group, five in number, are said to be inhabitants of the village of Appan. The other group, numbering eight, is called a band[26] from the encampment[27] (*ḫibrum ša nawīm*). The two groups are thus distinquished from each other, even though they are parts of a single larger group. One part appears to be permanently settled in a village while the other lives in a less permanent settlement outside the village. The men are probably heads of families who in this transaction are acting representatively, much in the same way that the elders must have functioned in the tribes of Israel. It is tempting to see in the general picture reflected here something of the structure of the Israelite tribes: the major factions were the village dwellers whose occupation was principally agriculture, and those who lived adjacent to the villages and who followed a pastoral way of life. Both groups played a part in the leadership of the tribe, but in the course of time the villagers would tend to outweigh the others in influence.

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[24] Neufeld, "The Prohibition Against Loans at Interest in Ancient Hebrew Laws," *HUCA*, XXVI (1955), p. 368, 369. He defines the most advanced agricultural grade as that wherein the tribes keep flocks and herds and draught cattle, where they know the use of the plough, and where handicrafts and trade are widespread. The use of metals is often characteristic.

[25] Boyer, *ARM*, VIII, no. 11, pp. 22-25; commentary on pp. 190-193.

[26] The term *ḫibrum* is translated "clan" by the editor of the text. It is so understood by A. Malamat, "Mari and the Bible: Some Patterns of Tribal Organization and Institutions," *JAOS*, LXXXII (1962), p. 145. The latter takes the thirteen sons of Awin as the heads of the respective families that constitute the clan, and the eight who compose the *ḫibrum* as a separate union of families within the larger unit of the clan or tribe. While family relationship in the present case seems probable, *ḫibrum* could also refer to an association based on religion, occupation, or friendship. Cf. the Hebrew cognate *ḥeḇer*, Hos. 6:9; Prov. 21:9.

[27] The word *nawûm* should no longer be rendered "steppe." J. R. Kupper, *Les nomades en Mésopotamie au temps des rois de Mari* (Paris: Société d'Edition "Les Belles Lettres," 1957), pp. 12f., and note 6, shows that in the Mari texts the term should be translated "encampment." Malamat, *op. cit.*, p. 146, remarks that the term embraces all the connotations which are found in connection with the biblical Heb. *nāweh*:

The verb form in the tablet translated "apportioned" (*inḫilu*) is of the same root as the Hebrew word for this action discussed in the preceding section. Unlike the Hebrew term, it is not constructed in the causative stem, yet there is a point of close comparison, since just as with the Hebrew the Akkadian word has taken the double accusative. Both field (*eqlam*) and Yarim-Adad must be taken as objects of the verb.[28] The sons of Awin have caused Yarim-Adad to possess--or apportioned to him--the field.

It is not known whether Yarim-Adad belonged to the tribe of the sons of Awin by birth, or if he was admitted by adoption or by some other means. He is called the brother of the sons of Awin, but this

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n^{e}wēh rō'îm ("shepherds' abode"), *n^{e}wēh ṣōn* ("sheep pasturage"), etc. The word is used in the plural several times in I Sam. 19:18-20:1 to refer to the dwelling place of a company of prophets.

[28] The verb is probably a hybrid form, neither Babylonian nor Amorite. Professor Mendenhall has observed to me that the vowel /i/ in the second syllable is characteristic of Amorite causatives, e.g., *ia-wu-ṣi* (=*yawṣi'*).

term cannot be pressed too literally, since he is known from another source to be the son of Yapaḫ, not Awin.[29] Inasmuch as he was a highly placed person, the tribe may have been under some pressure to admit him as one of their own and allot him the field.[30]

The allotment to Yarim-Adad has every appearance of being permanent, since whoever should institute a claim against it would have to pay a fine, a condition like the one inserted in sales documents. Furthermore, institution of a claim against it would be a crime against the king and against the eponymous father of the tribe.[31]

The matter of community ownership appears in another way when a group of possibly forty or more men institute a claim on crown land, maintaining that it was their field.[32] The suit is not against the crown, but against the city of Sagaratum, which may have attempted to annex the territory. King Zimrilim judges the case, since he reserved to himself the right of eminent domain.[33] The forty or more litigants and their "brothers" were probably seeking to maintain their claim to land ceded to them by the crown in reward for services rendered. In such a case as this the service would have been military, since it involved a clan or tribe. The land would have been theirs to enjoy the fruits thereof, but there would have been no right of disposal. Of this type of holding, more will be said later.

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[29] ARM, VIII, no. 14, l.4, p. 28. But if Awin is the eponymous ancestor of the tribe, this fact alone does not exclude him from being a member of the group by birth. Malamat, op. cit., p. 148, believes that he became a son of Awin through a legal fiction.

[30] Ibid., p. 193.

[31] Three other texts, ARM, VIII, nos. 12, 13, 14, employ the verb naḫālu in the disposition of land, but it is clear from their contents that they do not have to do with allotment by reason of participation in a community ownership, as in the case just discussed.

[32] ARM, VIII, no. 85, p. 126 ff.

[33] Ibid., p. 239, but a different view of Zimrilim's role as judge is expressed by H. W. F. Saggs, in his review of Boyer's volume in Journal of Semitic Studies, V (1960), p. 410.

Two other texts from the same collection are indicative of collective ownership.[34] They are guarantees to the palace for the presence and availability of a person. One shows eight guarantors; the other more than fourteen. The guarantors declare that if the person designated should disappear, run away, or become unavailable, they will pay fines (ten minas of silver in one case, twenty in the other). Presumably these large fines would be levied against property held in common by the guarantors, who are supposed to be members of a tribe or clan.

Kassite Babylonia

Parallels to the tribal ownership of land among the Hebrews are also known from the Kassite period of Babylonia, the *kudurru* stones of which show that tribal ownership existed side by side with private property.[35] Much of this tribal-owned land was not just pasturage, but cultivated land situated by the side of a canal or stream.

The land claimed by a tribe was divided among the villages, each district forming several cantons. The cantons were then subdivided and the portions awarded the members of the tribe. The individuals in a certain area whose land was sold to the king numbered thirty-four.[36] It is not known by what means the land was divided among the members of the tribe. Perhaps it was by lot, as it was among the Hebrews.[37]

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[34] *ARM*, VIII, nos. 62 and 63, pp. 90-93, 191, n. 1.

[35] So Cuq, *op. cit.*, p. 98 ff.

[36] Scheil, *Memoires de la délégation en Perse*, VI (1905), p. 40; cited by Cuq, *op. cit.*, p. 101.

Tribal ownership during the Kassite period was evidently maintained with some degree of tenacity. *Kudurru* stones which record purchases and gifts by the king contain imprecations against those who would reclaim the land for the tribe.[38] In one such text a defense against claims is addressed to the prefect of the tribe and to thirty-four individuals.[39] An attempt to reclaim tribal land once alienated is attested by another text. A governor had reunited to the land of his tribe a field situated by the banks of the Tigris which had been given by the king of the Sea Land to a goddess 696 years earlier. On the protest of the priest of the goddess, the king instructed the chief of the tribe to respect the donation which had been made.[40] As we shall see, the same or greater tenacity for the preservation of tribal property was exhibited by some Israelites.

Ugarit

The parallels which may be adduced from Ugarit have to do with the words *nḥl* and *nḥlt*. The latter is cognate to the Hebrew *nāḥ^{a}lāh*, and is used in the sense of "rightful property,"[41] just as it is in some biblical passages.[42] In both sources the idea of rightful property would derive from the notion of property apportioned on the basis of an established relationship, and therefore conforms to the usage of the term as discussed above.

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[37] *Ibid.*

[38] L. W. King, *Babylonian Boundary Stones and Memorial-Tablets in the British Museum* (London: British Museum, 1912), pp. 40, 41.

[39] Scheil, *Memoires de la délégation en Perse*, VI, pp. 40, 41.

[40] H. V. Hilprecht, *The Babylonian Expedition of the University of Pennsylvania*, Series A: *Cuneiform Texts*, I (1893), pt. 1, pls. 30, 31. Transliterated and translated by Felix E. Peiser, *Texte juristischen und geschaftlichen Inhalts*. *Keilinschriftliche Bibliothek*, IV (1896), pp. 64-67.

[41] A. van Selms, *Marriage and Family Life in Ugaritic Literature*, p. 138.

The word *nḥl* refers to the person to whom the property has been apportioned or one who succeeds to it. In some of the Ugaritic texts it appears that certain trades or professions were organized into guilds, and members of these guilds were the holders of property by virtue of their membership. The use of the land could be leased out to cultivators, who probably paid their rent in crops. Amongst these guilds were those of the priests[43]--a fact especially intriguing since the Levites (not allotted a territory as were other tribes) held certain cities and suburbs in Israel for their support, some of it being land held in common.[44]

Membership in the Ugaritic guilds which afforded the members possession of landed property was by royal grant and was hereditary; but the possessor of property did not need to die in order to confer upon someone else the right to hold land. The texts show that those who might rather loosely be referred to as successors or inheritors already exercised certain rights to land while the "testators" were still alive, and that the field of the "inheritor" was not the same as that of his "testator." This has been summed up as follows:

> "So it seems that a member of one of these privileged guilds could designate a *nḥl* who was not necessarily his son, and that by this designation--which had probably to be confirmed

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[42] Deut. 4:20; 9:26, 29; Psa. 28:9; 74:2. In these texts Israel is spoken of as the rightful possession of Yahweh.

[43] Henry, *loc. cit.*

[44] Lev. 25:32-34.

> by the king--the inheritor immediately became a member of the guild although the 'testator' was still living, and was entitled to the usufruct of a piece of land and obliged to perform the duties of his position."[45]

The duties referred to probably involved military or other services for the king. A substitute could be procured to perform them and a *nḥl* is known to have availed himself of this opportunity.[46]

Curiously, a *nḥl* could have a *nḥl* of his own and obtain recognition for him. There are even cases in which a "testator" and his *nḥl* together designated a common *nḥl* who is referred to as *nḥlhm*, "their *nḥl*." One case is known in which a testator, his *nḥl* and their common *nḥl*, appointed yet their common *nḥl*. But a person could also appoint more than one *nḥl* in the guild.[47]

Perhaps we have in this another legal fiction, whereby the followers of a certain craft or profession were regarded as a tribe, and thereby apportioned land. It is known that in post-exilic Judah groups belonging to certain crafts were called *mišpaḥôt*, families, or clans. The head of the group was called a "father," and fellow-workers were called "sons." The origin of this custom, however, was probably quite ancient.[48], [49]

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[45] Van Selms, *op. cit.*, pp. 137, 138.

[46] *Ibid.*

[47] *Ibid.*

[48] I Chron. 4:14, 21; Neh. 3:8, 31. De Vaux, *Les institutions de l'Ancien Testament*, I, pp. 120, 121.

[49] Certain texts from Alalakh (Wiseman, *Alalakh Tablets*, nos. 189, 190, 194) are read in such a way as to see parallels to Israelite acquisition of land. The term *purri* in these texts is taken as cognate to Hebrew *pûr* and understood to refer to houses or fields received by lot. So Speiser, "The Alalakh Tablets," *JAOS*, LXXIV (1954), p. 25; Cf. *Idem.*, "Notes to Recently Published Nuzi Texts," *JAOS*, LV (1935), p. 439. It is possible, however, that the word is to be read *burri*, in which case it may be synonymous with *zakū*, and thus designate property declared exempt from taxation or service, or, without encumbrance.

Control of Inheritance Within the Tribe

Concern that no land once allotted to a member of a tribe should ever pass into hands outside the tribe is expressed in Num. 27:8-11:

> If a man dies, and has no son, then you shall cause his inheritance to pass to his daughter. And if he has no daughter, then you shall give his inheritance to his brothers. And if he has no brothers, then you shall give his inheritance to his father's brothers. And if his father has no brothers, then you shall give his inheritance to his kinsman that is next to him of his family, and he shall possess it.

Women as Heirs, and Restrictions on their Marriages

Such a regulation as the above should effectively prevent the loss of any tribal land by inheritance to anyone outside the tribe, but there are loopholes involving cases wherein women succeed to property; for if the women get property and later marry outside their own tribe, their sons who will inherit their lands will be reckoned to the tribes of their fathers. Thus property would be lost to one tribe and gained by another. Special institutions developed in Israel to prevent the dissolution of tribal lands in this way; therefore the customs which are concerned with the limitation of inheritance to members of the tribe all have to do with women.

The problem existed as a result of admitting to women the right to inherit land. As is pointed out in a preceding chapter, the Mesopotamian cultures do not seem to have given recognition to the problem, since they did not acknowledge the right of women to inherit.[50] They enjoyed only the usufruct of land under certain circumstances, but the technical ownership of the land was in the hands of the woman's brothers.

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[50] The problem of having no male heir was commonly solved through adoption.

Admission of women to the right of a land allotment in Israel is represented in the Bible as an innovation. The daughters of Zelophahad protested that their father, who had died without sons to claim his share in the land allotment, would preserve no memory of his name within his family, or clan.[51] In response to their protest it was declared that women without brothers could succeed to their father's estates, as indicated in the above quotation. Preservation of one's name in Israel is linked with the proper possession of land.

Just how the name of the father is perpetuated through the ability of the daughters to inherit is not clearly stated. Will the daughters' offspring in such a case bear the name of the deceased grandfather, and not the father? No answer is suggested in the text, but this may be the natural solution.[52] Could it not be, however, that the grandfather's name is somehow attached to the land, rather than to the son?

Both of these suggestions seem to be ruled out by the text of Num. 36:3-4, which implies that the brotherless heiress confers upon the family of her husband the title to her property, which remains in the new family permanently and does not return to the original family in the jubilee year. In order to prevent the transfer of land in this way from one tribe to another, the daughters of Zelophahad (and other brotherless heirs) were instructed that they might marry only within their own tribe. Every effort was to be made to see that every parcel of ground would remain forever in the tribe (and perhaps clan[53]) to which it was originally apportioned (Num. 36:6-9).

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[51] Num. 27:4.

[52] Johs. Pedersen, *Israel, Its Life and Culture* (London: Oxford University Press, 1926, rpr. 1946), I-II, p. 94.

[53] There is the question here whether the expression *l^{e}mišpaḥat maṭṭeh* may not limit the woman's choice to her father's family within

It will be remembered that Babylonian law allowed for the loss of land to a family through marriage. Often a daughter's šeriktum (dowry) was presented to her in the form of land. Real ownership of the land was not in her hands, but in her brothers; the woman really enjoyed only the usufruct of the land. However, if the woman bore sons, they succeeded to her dowry, and thus land passed out of the possession of the family. The more urbanized Babylonia does not show in the Code of Hammurapi a concern about this loss; but Israel, the structure of whose society in this period was based on the tribes, was at pains to prevent it.

In keeping with the tradition that daughters were permitted to inherit, the three daughters of Job are said to have received an inheritance along with their brothers (Job 42:15). Consonant with the custom that women who were to inherit must marry within their tribe, the daughters of Eleazar were married to their cousins (I Chron. 23:22).

The generalization given above to the effect that Mesopotamian cultures did not allow women to inherit land must be slightly modified in light of a parallel to the story about the daughters of Zelophahad found at Nuzi.[54] In an adoption tablet which includes also what is evidently an erēbu marriage, the document stipulates that if the wife "does not bear a son, then the daughter of Gilimninu shall take one part of the property" (i.e. one part of the fields and the houses).

The Nuzi texts also exhibit a similar attitude to that of Israel in the matter of maintaining the land within the family of the owner.

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the tribe, but perhaps the phrase is used pleonastically and means only tribe.

[54] Speiser, AASOR, X, pp. 31, 32. Gordon, "Parallèles nouziens aux lois et coutumes de l'Ancien Testament," RB, XLIV (1935), pp. 34-41.

So-called "settlement texts," similar to wills, insert special clauses to prevent the property going outside the family; thus the wife of Zigi was permitted to discipline her sons for disobedience, but she could not disinherit them or give any part of the estate to an outsider. In another settlement it is declared that if any of the sons of Zigi sells his share for a price, he shall forfeit his property.[55]

In actual adoption tablets the same concern is observable. We find, for example, in different texts Shurihil, the brother of Zigi, adopting Shennima, the son of Zigi; Shennima adopting Arzizza, another son of Zigi; and Akapshenni, a son of Zigi, adopting his brother, Shelluni.[56] Such measures reflect a determined effort to keep the property within the clan.

Levirate Marriages

As shown above, Hebrew custom provided that a woman who had no brothers could succeed to the land of her father, but there appears to have been no provision permitting the widow of a man who died childless to succeed to her husband's property. The custom of the levirate marriage, described in Deut. 25:5-10, shows that the widow had no claim to the land, but that the brothers of the deceased husband were considered the rightful heirs. This is consistent with Num. 27:8-11, quoted above, and accords also with the customs of the Mesopotamian societies discussed in the preceding chapter.

According to Deut. 25:5-10 the brother of the deceased husband was expected to take the widow as his wife. The first-born son of this union, however, would succeed to the name of his deceased uncle, and it is implied that he would succeed to his property as well.

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[55] Speiser, AASOR, X, pp. 51, 52, with comment on p. 20.

[56] *Ibid.*, nos. 2, 3, 4, pp. 31-35, with comment on p. 20.

The levirate marriage therefore worked to retain the property within the family to which it had traditionally belonged. The widow was prevented from being married to an outsider, so that there would be no tendency for the possession of the land to drift outside the clan. If the levirate marriage produced no offspring the brothers of the man who died without issue were the proper claimants to his property.

Certain economic advantages were generally experienced by the man who took his deceased brother's widow and "performed the duty of a husband's brother to her." In addition to his own land he now became the administrator of his deceased brother's property to the exclusion of any other brothers or relatives, and had the full enjoyment of its produce. Even though the first son borne to him by the widow would eventually inherit the property in the name of the deceased brother, the second husband would have had a number of years to exploit the land to his own advantage. No loss to him or to his family would be involved. His other sons would inherit his original apportionment, just the same as if he had not married his brother's widow.

In spite of these obvious advantages, the text cited from Deut. 25 allows for occasions when a man might decline to marry his brother's widow. In such a case he was to be publicly disgraced: before the elders in the gate the woman was to pull the sandal off his foot, spit in his face, and say, "So shall it be done to the man who does not build up his brother's house." The drawing off of the shoe probably signified that the man in refusing to take the widow of his deceased brother had abandoned any claim to the administration of that brother's property.[57] An unpublished Nuzi text[58] concerning a mortgage is translated: "My foot from my fields and houses I have lifted up, and the foot of Urḫi-Sharri I have placed." The text may suggest a symbolic act indicating the formal giving up of possession on the part of one in the favor of another. The widow's act in removing the shoe of her brother-in-law possibly marked also a renunciation of the unwilling brother-in-law to any claim to the widow herself.

Nothing is said directly in Deut. 25:5-10 about succession to property, but the levirate marriage was most certainly concerned with it. It is specifically said that the first son issuing from a levirate marriage would succeed to the name of the dead brother, in order that his name should not be blotted out from Israel. The name was surely associated in some way with the inheritance, just as it was in the case of Zelophahad, whose daughters based their plea to succession on the same grounds (Num. 27:4). Having one's name associated with an allotment of land in some way invested it with the quality of permanence, so that it should not be blotted out from Israel. Notice that the expression "to perpetuate his brother's name in Israel" (להקים לאחיו שם בישראל, Deut. 25:7) is reproduced with nearly the same vocabulary in Ruth 4:5, 10, except that the latter substitutes the phrase, "upon his inheritance" (על נחלתו) for "in Israel." The name of the dead would be perpetuated upon his inheritance. The second appearance of this clause in Ruth (4:10) is the more impressive because it is followed immediately by the purpose clause: "that the name of the dead may not be cut off from among his brethren." One can scarcely avoid the conclusion that the first son of a levirate marriage succeeded to the property of the dead brother, and that the nephew perpetuated the name of the deceased one by being reckoned to his family and by inheriting his land.

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[57] C. F. Keil and Franz Delitzsch, Biblical Commentary on the Old Testament, The Pentateuch, trans. James Martin (Grand Rapids, Mich.: Wm. B. Eerdman's Publishing Company, reprint 1951), Vol. III, p. 423.

[58] Ernest R. Lacheman, "Note on Ruth 4:7-8," JBL, LVI (1937), p. 53.

The law of the levirate marriage is prefaced by the conditional clause, "if brothers dwell together." Much has been made of this clause, stressing that the law was operative only when brothers were dwelling together, as in an undivided household.[59] Others have taken the expression to mean that the brothers were living in the same community, as adjacent to one another, not necessarily in an unpartitioned estate.[60] Some account for the qualifying clause by suggesting that it was not removed when this law was copied from older material, and that the older material only reflects that brothers generally did dwell together.[61]

If the qualifying clause "if brothers dwell together" limits the application of the custom to cases in which the brothers dwelt in an unpartitioned household, and this appears to be the case, then there must have been many instances of widowhood when no levirate marriage occurred. In such cases the widow would have remained unmarried or have married someone outside the family.[62] If she remained unmarried, the estate of her deceased husband was administered by her brothers with the support of the widow being taken from the estate's produce. If the widow married an outsider, she left the household of her former husband and had no claim upon the estate. In either situation, the land of the dead became the property of his brothers; the widow could not inherit it.

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[59] Samuel R. Driver, International Critical Commentary, Deuteronomy, (New York: Charles Scribner's Sons, 1895), p. 281, 282.

[60] Keil and Delitzsch, op. cit., p. 422.

[61] Driver and Miles, Assyrian Laws, p. 243.

[62] That the widow could marry outside the family of her deceased husband is suggested with some reserve. In the story of Tamar (Gen. 38), the widow does not appear to have been free to marry outside the family.

That brothers might often work together to exploit an unpartitioned inheritance seems likely from the practices in neighboring areas. According to the Middle Assyrian "code" ancestral land sometimes remained undivided on the father's death and was held by the sons in common ownership. The partition was in such a case postponed, and the brothers in the meantime worked the estate in common.[63]

A Ugaritic document shows that such an arrangement was also practiced there.[64] The text regulated the relations between the elder and the younger brother on some property which was to remain in the undivided possession of the two.

The levirate marriage itself is best attested outside of Israel in Assyrian law, just as we have there the clearest references to brothers dwelling on undivided estates. Paragraph 30 of Tablet A in the Middle Assyrian laws discusses the case of a father who has two or more sons, one of them already married, and for the other one he has contracted a marriage by paying the betrothal gift to the prospective father-in-law. If the first son dies the father may take the wife of the dead son and give her to the son for whom he has already contracted a marriage by the paying of the betrothal gift. The prospective father-in-law who has received the gift may in such a case be unwilling to give up his daughter, but the father who brought the gift still seems to have his choice of taking her anyway and marrying her to his son, or of taking back the gift.

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[63] Middle Assyrian Laws, Tablet B, paras. 2-6, conveniently consulted in ANET, p. 185.

[64] Charles Virolleaud, "Six tablettes de Ras Shamra provenant de la XIV^{e} campagne (1950)," Syria, XXVIII (1951), p. 173 f. Discussed by Klima, "Untersuchen zum ugaritischen Erbrecht," ArOr, XXIV (1956), pp. 367, 368.

Paragraph 31 indicates that there was also a sort of sororate marriage. If a man had already paid the betrothal gift to the prospective father-in-law, and the prospective wife died, then he might marry a sister in the place of the dead wife. But if he preferred, he could take back the money which he had paid. The sororate marriage does not, however, involve itself in the matter of succession to property, although it does have the effect of protecting to some degree the bride-price. Paragraph 43 further defines the law of the levirate marriage in Assyria.[65]

Levirate marriage also appears in Hittite law, adding the stipulation that if all the sons die, then the father may take the woman.[66]

The Marriage of Ruth

The marriage of Ruth to Boaz is generally linked with levirate marriage, although it was not strictly that, since Boaz was not a brother-in-law, but a relative of Elimelech's and Mahlon's more distant than a brother. There existed a closer relative than he who himself was probably not a brother to the deceased.

Some believe that the marriage of Ruth to Boaz represents an extension of levirate marriage from the brother-in-law to a more distant kinsman,[67] but others contend that it is more probable to regard the Book of Ruth as preserving an older usage than the Book of Deuteronomy. According to this latter view, there had been a limitation of the duty of generating an heir to the dead, so that what had begun as an obligation on the next-of-kin, or failing him on others in order of nearness of kin, became limited in Deuteronomy to the next-of-kin only, and to him only if he were a full brother.[68] Judging from the form of the law as it appears in the Hittite Code,[69] and from the way in which the custom was observed in Gen. 38, where the father ultimately had relations with his deceased son's wife (although he was deceived as to her identity), it seems clear that the application of the custom in Deuteronomy has been narrowed down to exclude other relatives.

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[65] See in addition, A. F. Puukko, "Die Leviratsehe in den altorientalischen Gesetzen," Ar Or, XVII (1949), part 2, p. 297. His article discusses all of the above cited Assyrian laws on levirate marriage.

[66] The Hittite Laws, Tablet II, no. 193, conveniently consulted in ANET, p. 196.

While the marriage of Ruth to Boaz was not exactly a levirate marriage, the effect of it was to serve the same end, namely, "to perpetuate the name of the dead in his inheritance" (Ruth 4:10).[70]

The unnamed next-of-kin to Naomi and Ruth was first presented with the opportunity of redeeming the land which Naomi had sold. That is to say, he might buy for himself the possession of the land until the next jubilee, rather than permit it to go to an outsider.

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[67] Driver and Miles, Assyrian Laws, pp. 244 f.

[68] H. H. Rowley, "The Marriage of Ruth," Harvard Theological Review, XL (1947), p. 84 and note 32.

[69] ANET, no. 193, p. 196.

[70] The story of Ruth brings together two obligations of the next-of-kin: (1) the duty of raising up an heir to the dead, and (2) of buying up the property of a relative which was in danger of being lost to the family by being sold outside (Lev. 25:25 f.). Discussion of this second obligation is reserved for the next subdivision.

No information is given on the question of how Naomi obtained a claim to the land for herself in order that she might sell it (Ruth 4:3). It has already been shown that widows did not inherit the property of their deceased husbands. It is altogether possible, however, that a widow was regarded as retaining a claim to the usufruct of the property for as long as she lived, or until she married again. It is also possible that Elimelech had willed to Naomi a life interest in the property. Parallels for such a procedure occur in Babylonian, Ugaritic, and Nuzi sources.[71]

The next-of-kin showed himself willing and ready to redeem the land for himself. The price he would have to raise from his own estate, but against that would be the value of the produce of the land for as long as he should hold it. His readiness at first to redeem the land shows that the act would result in no financial hardship to himself, and might possibly represent a gain.

Only after the kinsman had asserted his intention to redeem the property was he faced with the fact that Ruth also was in some way related to the property. The same question can be raised with respect to her proprietorship as was raised concerning Naomi's. But Ruth was the widow of Mahlon, who had been the heir of Elimelech before his death in Moab. The same possibilities that might have acquired a claim to the land for Naomi would obtain for Ruth as well.[72] From another point of view, Ruth was a part of the total estate of the deceased, since it may be assumed that a bride-price was paid for her.

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[71] CH, para. 150. Thureau-Dangin, Syria, XVIII (1937), pp. 246-250. Speiser, AASOR, X (1930), pp. 19, 49, 50.

[72] Puukko, op. cit., suggests that Naomi transferred her rights to Ruth. The story does not support the suggestion, and 4:3 appears to be against it.

With Ruth's relation to the property in mind; the hitherto willing redeemer was told that in acquiring the land he also acquired Ruth in marriage, in order to restore the name of the dead to his inheritance (4:5). This is the more clearly indicated when one adopts the quite plausible emendation in 4:5, which reads גם־את רות, etc., rather than the Massoretic reading, ומאת רות.[73] It would be better, however, to translate the verb קנית by "acquire," rather than "buy," as the Revised Standard Version has it.

When Boaz presented to the nearer kinsman the two duties of redeeming the land and of fathering a son of Ruth, he was bringing together two separate and distinct matters which were not essentially related. In normal circumstances, when a kinsman redeemed his relative's property no marriage was involved; he simply paid the redemption price. On the other hand, in levirate marriage the brother-in-law did not buy the property and marry the widow. He married the widow and the property supported her and perhaps yielded something for him also, until a child born to them became the legal heir of the deceased man. But there was in this peculiar case the complication of Naomi's claim to property rights. Boaz skillfully linked together the two duties. While they were not essentially related, the unnamed nearest-of-kin was the nearest surviving relative of both Naomi and Ruth, and it would be difficult in such a situation to accept one responsibility without the other.[74]

Faced with both responsibilities, the next-of-kin withdrew his declaration of intent to redeem the land, on the ground that to do both would impair his inheritance (4:6). He must have reasoned that in order to buy Naomi's land he would have to invest a part of the value of his own estate, or inheritance. Then should he father a child of Ruth's, that son would in Mahlon's name, not his own, become the heir of land which he bought with money from his own estate. He seemed willing to redeem Naomi's property if it should not hurt him financially, or if he might possibly gain by it, but he could not accept the responsibility if it should eventuate in a diminution of his own resources and a consequent injustice to his own heirs.

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[73] The emendation is suggested in Rudolf Kittel's Biblia Hebraica in the third and following editions. Support for the reading is claimed from the Old Latin, the Syriac, and the Vulgate. The Greek text seems to incorporate both readings.

[74] Rowley, *op. cit.*, pp. 89, 90.

The question might be raised, why the next-of-kin did not dissociate the two customs and insist on redeeming the land without marrying Ruth. There may have been more than an unwillingness to face the social pressures that must have been present. Perhaps the kinsman observed enough to sense that if he redeemed the land without marrying Ruth, then Boaz would probably marry Ruth as the kinsman next in succession and beget an heir to Mahlon who would inherit the very land which he had spent his money to redeem! The only course open to him without loss to his own inheritance and without embarrassment lay in withdrawing his rights as the nearest-of-kin in favor of Boaz, who was prepared to assume both responsibilities mentioned above.

The drawing off of the sandal (4:8) was the symbol that the kinsman was abandoning his rights in these matters to Boaz. It did not symbolize the sale of anything, for the next-of-kin did not sell nor buy anything. But the kinsman did abandon to Boaz the rights and duties of redeeming Naomi's land and marrying Ruth, and it was this which he symbolized by drawing off the sandal.[75]

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[75] *Ibid.*, p. 87.

Boaz's declaration of the assumption of the responsibilities of buying the land from Naomi and of marrying Ruth is recorded in 4:9, 10. The text of verse 10 gives strong support for the emendation suggested above for verse 5; but again, it is better to translate the verb "I have acquired" rather than "I have bought."[76] There is nothing to indicate that Boaz bought Ruth, or paid a marriage-price for her.

It is probable that Boaz before his marriage to Ruth was childless. Most likely he was a widower, since bachelorhood at his age was in ancient Israel most unlikely, especially with his financial resources. It is also likely that the son of Ruth not only became the heir of Elimelech and Mahlon, but that he inherited the estate of Boaz as well. These inferences are constructed from the fact that Obed was regarded as the son of Naomi (and therefore Mahlon's) in 4:14-17, but as the son of Boaz in the genealogy (4:21).[77]

Redemption Rights

The Biblical Pattern

An integral part of that system which viewed the proprietorship of land within the framework of tribal ownership was the right of redemption. The principal passage on the institution occurs in Lev. 25:24-34. The custom required that if an Israelite became impoverished and sold his land or a portion of it, his next of kin should redeem what his relative had sold.

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[76] Although קנה is sometimes legitimately translated "to buy," there are other places where the term has the more general sense of to acquire, and where it does violence to the text to introduce the idea of buying. See *BDB*, p. 888.

[77] Rowley, *op. cit.*, p. 98.

In actuality, the land was sold only in the sense that the use of the land for a number of years was surrendered so that it might be regarded as a kind of lease. When the kinsman redeemed the land of his brother, he was required to return the sum of money equivalent to the rent for the years the lease was yet supposed to run, namely, until the jubilee. This may be inferred from what was required of the man who had sold his property, if he was to redeem his own land. According to Lev. 25:27, he was to "pay back the overpayment to the man to whom he sold it," and thereafter he could return to his property. It is reasonable to conclude that the redeeming kinsman would make the same payment.

It has been supposed that the text called for an extreme kind of selflessness, that a person should assume the burdens of an indigent kinsman, paying off his debts or repurchasing his property which had been sold, and restoring his land to him. Such altruism is not what was in view at all. Redemption of the land was not a sentimental regulation that the kinsman should assist the needy by preserving the property for his less fortunate relative. The redeemer took the land into his own possession and used it for his own ends. The purpose that was served by the redemption was the retention of the land within the tribe and family. The land did not return to the hands of him who sold it until the jubilee, even when it was redeemed by a kinsman.

That the redeemer expected to keep the field in his own possession is clearly observable from Jer. 32:6-12. For while this incident in Jeremiah was centuries after the times that are now being discussed, the custom observed there was a survival of Israel's earliest history. When Jeremiah redeemed the field of his cousin, he redeemed it from the cousin himself. That is to say, he paid the redemption price of seventeen shekels of silver to the kinsman to whom the field belonged, and got from him in exchange a signed and sealed deed of sale which was properly witnessed. It appears then, that when the relative Hanamel decided for some reason to sell his land, he offered it first to Jeremiah, since the right of redemption was his. When Jeremiah redeemed the land it changed possession from Hanamel to Jeremiah, but the purpose of redemption was fully accomplished, in that the property did not pass out of the family and into the hands of a stranger. The whole point of this incident as it was told to King Zedekiah, and as it related to the siege of Jerusalem, would be lost if the property had not changed hands.

The same situation existed in the story of Ruth, discussed in the previous subdivision. Naomi had sold the land to which she had claim (Ruth 4:3), and desired a kinsman to redeem it. When Boaz redeemed the land it passed into his possession, even though it is proper to assume that he generously provided for Naomi's care.

If the property sold was not in a village or in the open country, but was a dwelling in a walled city, a limitation was placed on the period of time that might elapse when the right of redemption could yet be exercised. A dwelling within a walled city might be redeemed at any time within a whole year after its sale; thereafter the property was reckoned in perpetuity to the purchaser, and there was no right of redemption (Lev. 25:29, 30).

Why was this distinction made between property sold within a walled city and property sold in the village or open country? It has already been shown that the Israelite system of tenure by tribe existed side-by-side with the more urbanized system known to the Canaanites. The strongholds of the Canaanites were the walled cities around which their civilization was built. The limitation on redemption rights within the walled city was a tacit recognition that the Canaanite system was entrenched in the cities, and that even in the cities where Israelites prevailed, concessions had to be made to Canaanite legal customs. The only walled cities wherein this limitation on redemption did not obtain were those especially assigned to the Levites (Lev. 25:32, 33). Otherwise, Israel was less concerned about redemption of city property for the reason that it was not the means of economic support for a family in the same way as rural property.

Parallels from Cognate Sources

Redemption of property was known in Babylonia, and was explicitly provided for in the Laws of Eshnunna. It has already been shown in other connections that the society reflected by this code preserved more points of comparison with the people of Israel than that more urban society reflected in the Code of Hammurapi.

Paragraph 39 of the Laws of Eshnunna[78] protects the maintenance of family property by providing that if a person became poor and had to sell his house, then the house could not be resold to a third party without first offering it for sale back to its original owner.

While the Laws of Eshnunna are the only Babylonian Code to provide for redemption of property, a number of deeds relating to the sale of land and dating from the Old Babylonian period close with a clause in which the seller and his descendants promise never to attempt to buy back the land. If they should make the attempt, a heavy fine was to be imposed. These provisions would indicate a desire to thwart a rather common procedure.[79]

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[78] Goetze, The Laws of Eshnunna, AASOR, XXXI (1956), p. 106. Josef Klima, "Einige Bemerkungen zur Regelung des Kaufes nach den vorhammurapischen Gezetzen," AHDO/RIDA, II (1953), p. 95.

[79] Eli Ginzberg, "Studies in Biblical Economics," JQR, XXII (1931-1932), pp. 343-408, citing texts published by Meissner, in Beiträge zum

The practice was also evidently observed at Ugarit. One document deals with the redemption of a fortified house, some fields, and also some bronze utensils. The verb *paṭaru* in the document, which means "to loose" or "to liberate," marks this tablet, in the judgment of the text's publisher, as an agreement of redemption rather than an ordinary sale.[80]

Yahweh's Ownership

God as the Principal Owner

The Biblical Concept

That God was the ultimate owner of the land held by the Israelites is quite consistent with the fact that Israel's God was understood by them to be the creator and owner of the entire world. In Exod. 19:5 the selection of Israel as the covenant people is represented as based upon this universal ownership: ". . . if you will obey my voice and keep my covenant, you shall be my own possession among all peoples; for all the earth is mine."[81] Deut. 10:14, 15 remarks also on this all-inclusive proprietorship. Other passages which assert God's possession and ownership of the entire earth are Psalm 50:12; 89:11; and 24:1.

God as the ultimate owner of Israel's land also followed from the fact that the land was represented as a gift from God to his people. This is expressed even in the patriarchal narratives,[82] but is repeated

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Altbabylonischen Privatrecht.

[80] F. Thureau-Dangin, "Trois Contrats de Ras-Shamra," *Syria*, XVIII (1937), p. 247 and 251-3. The verb is used with this meaning in the Code of Hammurapi. Driver and Miles, *The Babylonian Laws*, Vol. II, p. 397.

[81] Assigned by some literary analysts to the J document, dated to the 10th century, B.C. So Aage Bentzen, *Introduction to the Old Testament* (2nd ed.; Copenhagen: G. E. C. Gad, 1952), Vol. II, p. 51. To date a source does not, of course, date the origin of its content.

[82] Gen. 15:7; 28:13; both assigned to J. *Ibid.*, II, pp. 28, 30.

with more frequency when the covenant community is more in view. Among the numerous passages which speak of Palestine as God's gift to Israel see Josh. 1:2; 23:15.

What God is understood to have done for Israel in the above passages, he is represented in Deut. 32:8, 9 as doing for all the various peoples.[83] The Most High is said to have apportioned an inheritance to the various peoples (*gôyim*), but he reserved Israel as his own portion (*ḥēleq*) and inheritance (*naḥalāh*).[84] While God's ownership of the entire world was recognized in numerous places, the Lord sustained a special relationship to the land possessed by his elect people.

There is a key passage, however, which links the assertion of God's ownership of the land to the customs observed by the tribes in their land tenure, thus constituting a connection between the concept of tribal ownership, as discussed above, and divine ownership. The text appears in chapter 25 of Leviticus, the most extended reference to customs dealing with land policies during the period of the tribal confederacy.[85] Lev. 25:23 reads: "The land shall not be sold in perpetuity, for the land is mine; for you are strangers and sojourners with me."

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[83] Dated by some to the 10th century, B.C. So W. F. Albright, *From the Stone Age to Christianity* (2nd ed.; Garden City, New York: Doubleday and Co., 1957), p. 296.

[84] I leave out of consideration the fact that some distinguish between 'Elyon and Yahweh as though they were originally different deities, since that does not need to be settled here. Albright, while accepting the emendation *b^{e}nê 'el* at the end of verse 8, denies that these sons of God are in reference to a pagan pantheon. He paraphrases the passage thus: "God created and assigned abodes to a multitude of different nations, but of them all he chose Israel as his special charge." *Ibid*., pp. 296-7.

[85] The chapter is generally assigned to P and dated to the end of the 6th century, B.C. However, the text refers to customs much older than that, and, as I believe I show in the following pages, reflects viewpoints that antedate the monarchy.

In what light was the assertion of God's ownership to be understood? It has been suggested that this concept was expressed to convey the doctrinal truth that through his legitimately constituted representatives God could dispose of the land for the common good, which in some cases would be superior or even contrary to the proximate good of the human owner who held title to the property.[86] There is a general sense in which this statement is true, of course, but it does not relate this assertion of God's ownership to its context. Viewed in its immediate context, the statement of Lev. 25:23 was not given to justify change, but to forestall it.

Could God's ownership be related in any way to a nationally restricted, or geographically restricted, god, who had migrated into the land with his people, so that Yahweh was regarded as the lord of the land by right of conquest, the people having taken it over under his leadership? This idea also fails to fit the context of the situation. The prohibition against sale is concerned to preserve the claim of every Israelite to his own land, whereas the exclusive recognition of Yahweh as Israel's national God would be just as well verified if a few Israelites held title to all the land. Such an explanation might show why the land should not be sold to aliens (which in fact is not what is specifically proscribed in Lev. 25), but not why it should not be sold to Israelites in perpetuity.[87]

The proper concept of this divine ownership appears to be that every Israelite proprietor was to regard his holding as deriving from God himself, as though it had been apportioned to him from God. The effect of this would be to promote a spirit of independence in economic as well as social concerns. There existed the consciousness of an intrinsic equality among the Hebrews before God which had its roots in the covenant relationship, but which was expressed, among other ways, by each head of a family holding his own land as from God. In order to preserve this standing of equality, there were strong efforts made to resist the latifundism of Egypt and Babylonia, which would subject one Hebrew to another. A strong deterrent was the concept of Yahweh as the owner of all the land, from whom each holder received his portion as an inalienable heritage.

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[86] Robert North, Sociology of the Biblical Jubilee (Rome: Pontifical Biblical Institute, 1954), p. 159.

[87] *Ibid.*, p. 160.

Parallels from Neighboring Cultures

It should be expected that many peoples would regard their own deities as owners of the land over which they were thought to exercise rule. A god would surely be considered the lord of his domain. The idea, therefore, could be almost universal. However, in the culture areas adjacent to Israel the viewpoint was more explicit among some than others, and brief attention will be given to these. But in none of these areas is the concept really the same as Israel's.

Early Sumerian cities have been thought by many to exhibit the concept that the god was the owner of the community and all its land, with the citizens assuming the role of his tenants. This view now requires revision, as observed above.[88]

Divine ownership of land was, however, a common feature of Egypt. This was so not only because of the enormous temple estates, but also because of the crown land, which was likewise held by a god, since the Pharaoh was worshipped as such. In a technical sense all land belonged to the king as a god. The king was the sole owner, and there was no private ownership in Egypt.[89]

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[88] Above, p. 4f.

From the practical standpoint there was private ownership, for there were de facto hereditary occupants of the soil; but these were possessors without being truly the owners. There was somewhat of the appearance of ownership, since they sold, mortgaged, or bequeathed their land, subject to certain taxes, which were really royal rents, chiefly payable in kind or produce. It was a sort of leasehold land.[90]

While recognizing the practical existence of this kind of ownership in Egypt, it has been remarked that all private property, as early as it really originated in Egypt through kingly gifts, was basically an exceptional transference of a kingly right, since every personal freedom and every rank could theoretically be made to go back to the king's charity. The fact that local dynasties sometimes arrogated to themselves such a procedure does not change the theory any since they were behaving themselves like kings, or the descendants of gods. The land as well as other rights was retractable by the king, so that the death of the king and the accession of a new one could shake up the distribution of the land.[91]

Two matters gave the appearance of private property none-the-less. One was inheritance and the other freedom of purchase. As a case of the latter, there was the example of Meten, a person of high rank in the Old Kingdom, who bought 200 measures of land from numerous Königsleute, a class of people who were a kind of hereditary tenants on king's land. But all such exchanges had to be approved by the king and recorded by his official.[92]

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[89] Hermann Kees, Ancient Egypt: A Cultural Topography (Chicago: University of Chicago Press, 1961), p. 61 f.

[90] Ibid., pp. 63, 68, 72.

[91] Hermann Kees, Ägypten, Erster Abschnitt von Kulturgeschichte des Alten Orients, ed. Walter Otto (München: C. H. Beck'sche Verlagsbuchhandlung, 1933), pp. 42-44.

During the Empire Period in Egypt the pharoahs gave enormous endowments to the temples of the gods, especially to the temple of Amun-Re at Karnak. The endowments included agricultural land, gold mines, and other types of real estate. It appears quite certain that Amun-Re, King of the gods, must have become the wealthiest property owner in Egypt, except for the pharaoh.[93] While these endowments had certain economic and political effects, the exchanges were actually from one god, the king, to another, so that the divine ownership of the land did not change.

As in earlier periods of Egyptian history, private property in some sense did exist, but its limitations cannot be defined. Land was bought and sold by private individuals, even by those of rather humble station. It has been said that the seeds of private enterprise were there, but that they failed to develop during the empire.[94]

The concept of divine ownership of the land must surely have been most common to the Egyptians of every ancient period, even though the amount of practical private holding of land fluctuated from time to time.

A most interesting example of the idea of land ownership by the god is known from Old South Arabia. Texts from South Arabia published by Rhodokanakis show that the land belonged first of all to the state, but was claimed specifically by the ruler for the god.[95] One text records that the conqueror took over the possession of hostile territory for the god ʾLMKH and for the country Saba . He also allotted territory for three other gods and for Hadramot. The constitutional formula for the state was "god, king (as representative of the god), and people," and the land was their property. The king administered the land as the agent of the deity. Under this arrangement the king and the state were practically one and the same, and the king exercised the sovereignty over the land. None-the-less, the god occupied a special position.

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[92] Ibid.

[93] William F. Edgerton, "The Government and the Governed in the Egyptian Empire," JNES, VI (1947), p. 156.

[94] Ibid., p. 159.

A large number of these South Arabian texts (the so-called *UTF* documents) relate to an arrangement concerning land which Rhodokanakis refers to as *γη ἐν ἀφεσει*. The term *UTF* belongs to a root meaning to give over, to surrender, and the land treated by these documents was terrain which the proprietor did not manage or cultivate directly, but which he relinguished to another for cultivation without diminishing or surrendering his right of ownership.[96]

One class of the *UTF* documents has to do with an arrangement between the king and a tribe. The tribe, together with its squatters and bondmen, or in any case a larger community, was colonized on property given over to them which consisted of land, houses, and palm gardens. The obligations put upon the property were public charges, i.e. taxes, and an additional levy on the produce of the lands for the real proprietor. Yet there existed in this arrangement some appearance of private property, and indeed, of hereditary property.[97]

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[95] Nikolaus Rhodokanakis, "Die Bodenwirtschaft im alten Südarabien," *Anzeiger der Kaiserlichen Akademie der Wissenschaften*, Wien, Philos.-Historische Klasse, LIII (1916), pp. 173, 174.

[96] Rhodokanakis, *loc*. *cit*. See also Rhodokanakis, "Das öffentliche Leben in den alten südarabischen Staaten," in *Handbuch der altarabischen Altertumskunde*, ed. by Ditlef Nielsen (Copenhagen: *Nyt Nordisk Forlag*, 1927), p. 138.

It is this tribal settlement on land not their own, on which they have hereditary rights none-the-less, coupled with the god's claim to ultimate ownership, which gives striking resemblance to the Israelite system, at least superficially. It is not easy to assess, however, to what degree there existed a parallel to the Israelite concept of divine ownership expressed in Lev. 25:23. "We cannot say whether there is really question here of a lofty concept like that of Lv, or of a mere superstitious formula to mask an extensive latifundism. . . . But the resemblance of terminology is striking."[98] It must be observed, also, that the manner of land holding just described was but one among others in South Arabia, whereas in Israel God was the owner of all the land.

The Hurrians of Nuzi may once have had the viewpoint that the land was owned by the god,[99] but there is no proof of it.

Earlier in this chapter a view was expressed concerning the land tenure system among the Canaanites before and at the time of the Israelite invasion. It was pointed out that the Canaanite gods (the *baʿalim*) were considered the owners of the geographic areas with which they were identified. But they were owners after the fashion of the landed proprietors who worshipped them; so that the *baʿalîm* supported the social and economic institutions of the worshippers.

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[97] Rhodokanakis, "Die Bodenwirtschaft . . .," *Anzeiger der Kaiserlichen Akademie der Wissenschaften*, Wien, P.-H. Klasse, LIII (1916), pp. 173, 174.

[98] North, *op*. *cit*., p. 55.

[99] E. M. Cassin, *L'adoption à Nuzi*, (Paris: A. Maisonneuve, 1938), pp. 29-31. Cassin derives the whole procedure of the sales-adoption tablets from the notion that the god owned the land. However, his view of the matter is a rationalization standing completely outside the possibility of demonstration from the text material, and is based on a philosophy of religious evolution subjectively applied to Israel and then transferred to Nuzi. On this assumption he sees in the sales-adoption the establishment of a new religious relationship between seller and buyer. He does not maintain that this concept was still active at the time of the Nuzi tablets.

As the following pages will show, Israel's concept of God as owner supported an entirely different set of social and economic institutions. It seems fair to conclude that their concept of divine ownership was different.

Prohibition of Sale

Inasmuch as the land was Yahweh's land, the portion held by an Israelite was inalienable. After the original apportionment of the land following its appropriation from the Canaanites, an individual Israelite received his portion by inheritance. There was no other legal method devised whereby he might come into permanent possession of landed property, and there was therefore no proper way in which to dispose of property except to apportion it to his legal heirs.

This principle of the inalienability of the land was fundamental to the whole economy of the period of tribal federation, and in light of that fact it may appear strange that the prohibition of any land sales is explicitly stated in but one verse of Scripture (Lev. 25:23). But the principle underlay the jubilee and other social customs yet to be discussed, so that the idea had a larger place than first appears. The argument from silence is impressive, too. Nothing is said which presupposes that permanent sales were taking place in this early period. Furthermore, the resistance on the part of some to the abandonment of this principle in a later age (I Kings 21:1-19) shows how firmly the observance of it was entrenched in the customs of the period of the Judges.

Since the land could not be permanently alienated, the only saleable thing was the produce of the land. The owner could, however, also sell the use of his land for a period of time, in what amounted to a lease.[100]

From the English text of Deut. 18:8 it might appear that there was an exception or an inconsistency, at least in the case of certain Levites, for as the verse reads it appears that a part of their subsistence might come from the sale of their father's patrimony. But this text has been mishandled by the translators, and no sale is in mind. G. R. Driver is surely correct in maintaining that the word here translated "sale" is not from מִמְכָּר but from מֶכֶר, and that the proper pointing should be מִמַּכָּרָיו,[101] although he had been anticipated by **Dillmann.**[102] The Hebrew term מֶכֶר may be compared with the Babylonian word *makkūrum*, which means property, as in such expressions as *makkūr bît abim* (the property of a father's house) and *makkūr ramānišu* (his own property). The Hebrew phrase in Deut. 18:8 (מֶכֶר עַל־הָאָבוֹת) should be taken as the equivalent of the Babylonian *makkūr bît abim* and understood as the property derived by inheritance from his father. The verse should therefore be translated: "They shall eat portion like portion, aside from the patrimony of his fathers." The general meaning is that when a Levite would come in from the country to serve he should have the same fees as the others there, and that his patrimony should not be considered in determining his due.[103] The reading in this verse of לבד plus the preposition מן is consistent with usage elsewhere, as in Deut. 3:5; Exod. 12:37; and Num. 29:39.

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[100] This will be more fully explained in discussing the jubilee.

[101] G. R. Driver, "Two Problems in the Old Testament Examined in the Light of Assyriology," *Syria*, XXXIII (1956) pp. 77, 78.

[102] Frants Buhl, *Wilhelm Gesenius' Hebräisches und Aramäisches Handwörterbuch über das Alte Testament* (Berlin: Springer-Verlag, 1949), p. 432.

The attitude that one's holding in land was inalienable was not altogether peculiar to Israel, for other societies reflect a similar viewpoint. The Nuzian attitude against the sale of landed property is known not from any declaration against it, but rather from the numerous cases in which a transfer of land was effected in the face of a total absence of any reference to sales. In other words, the rule is known by the breach of it through the means of a legal fiction, even though the rule itself is not expressed.

These transfers of land at Nuzi were accomplished through employing the form of adoption, so that the title of such documents (*ṭuppi mārūti*) is the same as those recording real adoptions. The content of these "sale-adoption"[104] tablets, however, makes it quite easy to recognize them as disguised property sales. The seller assumed the role of adoptive parent, while the buyer became the adopted son. The property to be sold was called the inheritance portion (*zittu*); and it was described rather minutely, as one would expect in sales, but would find strange in a real case of adoption. The compensation for the property was never called the price but was thinly disguised under the euphemism of gift, or honorarium (*qištu*), an item which would never appear in a real adoption. Another clear indication that these tablets deal with disguised sales is the naming of the contracting party who should be responsible in the event that claims are registered against the property. All of these factors justify the viewpoint that the device of the sale-adoption provided "a legally unimpeachable by-path for transferred ownership of property, the sale of which in a direct way was not sanctioned by the law of the country."[105]

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[103] Driver, "Two Problems in the Old Testament Examined . . .," *Syria*, XXXIII, p. 78. See also Driver and Miles, *The Babylonian Laws*, pp. 325, 326.

[104] The designation is borrowed from Speiser, "New Kirkuk Documents Relating to Family Laws," *AASOR*, X (1930), p. 14.

Confirmation that the above-mentioned adoptions were sales and that the "gift" was, in effect, the purchase price, is seen in the fact that there is relative close agreement between the "gift" and the average sale price of a given piece of land in both Assyria and Nuzi, together with further agreement in the relative values of fields, orchards and houses in Babylonia and Nuzi respectively.[106]

The origin of this legal fiction disguising the sale of land seems to be that it developed out of a feudal system. This suggestion is ready at hand in the form of the sales-adoption tablets, the majority of which provide for the continuation of the *ilku* (feudal service) after the property has changed hands. It may be inferred from this that legally the king owned the land and granted it to his subjects. They were each permitted to pass the holding on to the male representatives of his own immediate family, but had no right to sell.[107] The relationship was therefore much like that of certain property holders at Larsa who held grants from Hammurapi (see below).

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[105] *Ibid*., pp. 13-15. See also Cassin, *op*. *cit*., p. 17. The interpretation given above is the generally accepted one, and information yet to follow will reinforce that viewpoint. For another interpretation see Hildegard Lewy, "The Nuzian Feudal System," *Orientalia*, nova series, XI (1942), 1-40, 209-250, 297-349.

[106] So Francis Rue Steele, *Nuzi Real Estate Transactions*, (*American Oriental Series*, Vol. XXV; Philadelphia: 1943), pp. 59, 38.

[107] Speiser, "New Kirkuk Documents Relating to Family Laws," p. 14. Steele, *op*. *cit*., p. 15. Speiser gives priority for the opinion to Koschaker. Cassin, *op*. *cit*., pp. 22-27, rejects the idea that the sales-adoptions developed out of a feudalistic background. To offset the arguments about the *ilku* given above, he reinterpreted the term and offered a new etymology for its synonym, *irwišši*. He does not appear to have gained acceptance for his views. Purves remarks that Cassin's

Further support for the origin of the sale-adoptions in feudalism can be seen perhaps in the evolution of the form of the *tuppi mārūti* documents as used to disguise sales. Two examples of sale-adoption from the earliest period of Nuzi may be cited.[108] The transactions lack some of the characteristic features that are quite common later, and are drawn up in much the same form as real adoption. But since they are disguised sales, both tablets specifically exclude certain obligations that might be expected to fall upon the adoptee in a real adoption. One pointedly excludes the obligation of "searching and mourning." Both of them absolutely bar the adoptee from claim in property not immediately involved in the transaction. Otherwise the early sale-adoptions lacked the technicalities required later on, and this fact suggests that the sale-adoption was at this time in its very beginning; when the conditions were still in force that gave rise to these hidden sales.

While the fiction of the sales-adoption was created to circumvent the principle of the inalienability of the fiefs, enabling a person to realize a sale without falling under punishment for the infraction, the conditions which created the fiction were surely passé at the time when most of the documents were inscribed. This is quite apparent from the fact that while the form of the documents avoids the terms of outright

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etymology of *irwišši*, as if it were from *erēbu*, is groundless. Pierre M. Purves, "The Early Scribes of Nuzi," *AJSL*, LVII (1940), p. 166. Professor Mendenhall finds it tempting to connect the Hurrian *irwišši* with the term *unuššu*, found in the Akkadian documents from Ugarit.

[108] *Joint Expedition with the Iraq Museum at Nuzi*. *Publications of the Baghdad School* (Philadelphia: American Schools of Oriental Research, 1934), IV, nos. 404, 414. Cited by Purves, *AJSL*, LVII (1940), pp. 167, 168.

sale, no precautions are taken to obscure the intention of the transactions. Not only did the tablets record both the adoption and the transfer of property in the same document, but one person in this community managed to be adopted by eighty different fathers.[109]

There is evidence that at Mari some property was not to be sold. A certain text shows an exchange of five *sar* of improved land for eleven and one-half shekels of silver. Again, however, there is the avoidance of the terms of direct sale, but not in the same way as at Nuzi. In this Mari document the verb *naḫālum*, meaning to allot an inheritance portion, is twice employed.[110] The seller "allotted" the property to the buyer. In return the buyer "allotted" the money of his own free will. The nature of the deal is transparent. Clearly these terms are employed in this poorly disguised sale only because the property sold was in principle inalienable, and was supposed to be presented only to one's legal heirs.[111]

The community of Ugarit has yielded an instance of disguised sale,[112] leading to the inference that some property there, too, was inalienable. A woman, probably a widow, adopted a son, who brought with himself the large sum of five hundred shekels, evidently as the price for the property, although it is not called that. That the function of this arrangement was to effect a sale is obvious from the fact that the tablet makes provision for the dissolution of the relationship, and all to the advantage of the bearer of five hundred shekels. The adopted one acquires control of the property, and may elect to expel the adoptive parent whenever he may desire. The woman, if expelled, is allowed to separate from the estate the donation which her husband made to her and take it with her, leaving the property to the adopted son.[113]

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[109] Georges Boyer, "Sur quelques emplois de la fiction dans l'ancien droit oriental" *RIDA*, 3^{e}série, I (1954), pp. 76, 77.

[110] Boyer, *ARM*, VIII, no. 13, pp. 26-28: 5 SAR É. DÙ. A ^{m}Ili-paḫalum ^{m}Yarim-^{d}Adad inḫil ina ṭubi libim 11 5/6 SU KÙ. BABBAR ^{m}Yarim-^{d}Adad ^{m}Ili-paḫalum inḫil. Commentary on pp. 194, 195.

[111] Text 14 of the same collection seems to be another of the same type, but much of it has been destroyed. *Ibid*., pp. 28-31.

[112] Virolleaud, *PRU*, III, no. 16.200, pp. 64, 65. Commentary by Boyer, *PRU*, III, pp. 303, 304. By the same author, "Sur quelques emplois de la fiction . . .," *RIDA*, I (1954), pp. 80-83. See also Klima, "Untersuchungen zum ugaritischen Erbrecht," *ArOr*, XXIV, p. 360.

That certain landholders in Babylonia of the Hammurapi era were forbidden to sell their land has long been known, not only from the Code of Hammurapi, but from texts recovered at Larsa.[114]

Tenure as Fiefholding from Yahweh

It is important to establish whether the Israelites, in acknowledging Yahweh's ownership of the land, regarded military or other service to him a condition of their tenure of land, and whether an analogy may be drawn between the relationship existing between the king and certain of his subjects living on crown land in some Mesopotamian and Syrian societies, and that existing between Yahweh and his subjects. In order to do this, the "feudal" relationships in surrounding areas will be briefly described, after which a few inferences will be made from the pertinent biblical texts.

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[113] As an alternative interpretation, it is possible that the land itself was not inalienable, but the subterfuge of adoption was employed to make it possible for a woman to sell it when no legal right for her to do so was acknowledged. As a widow without sons, the property she held would normally revert to the brothers of her deceased husband. By resorting to the **fictitious** adoption the woman could have presented the appearance of having a legal heir upon whom to bestow the property, while acquiring for herself a sizeable price for it. See Boyer, RIDA, I, p. 83.

[114] A discussion of those restrictions in Babylonia will be found in the ensuing paragraphs on fiefholding.

Fiefholding in Babylonia

An excellent source of information on fiefs in Babylonia comes from the city of Larsa, whose economy experienced a great change following its capture by Hammurapi. Prior to its capture a number of documents record the sale of real estate; only a few were written afterward.[115] Hammurapi took over much of the area as crown land and used it to sustain those who served him.

The distribution of the Larsa land was committed to the governor, Šamaš-Ḫāṣir, who gave it in fief to cultivators in service to the crown. Various classes of people were settled on this land: royal officials and functionaries, merchants, artisans, shepherds, soldiers, and tenant-farmers.[116]

The tenant-farmers were given allotments which could not be sold or mortgaged, but they were not restricted from buying or selling land outside the crown land. Their duty was to render a part of their produce to the king; this was their *ilku*. In keeping with this duty their land was called *eqel biltim*, revenue producing land. Officials, artisans, and soldiers, in a somewhat better position, were rewarded for the differing services which they rendered to the crown with grants of land called *A. ŠÀ kurummatum*, land which produced their sustenance.[117]

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[115] Lubor Matouš, "Les contrats de partage de Larsa provenant des archives d'Iddin-Amurrum," *ArOr*, XVII (1949), pt. 2, pp. 142-146.

[116] F. Thureau-Dangin, "La correspondance de Hammurapi avec Šamaš-Ḫâṣir," *RA*, XXI (1924), pp. 3, 4. Driver and Miles, *Babylonian Laws*, pp. 112-114.

[117] I. M. D!iakonov, "Muškēnum и повинностное землевладение на царской земле при Хаммураби," *Eos*, XLVIII (1956), Fasc. 1. English summary, pp. 37, 38.

Some holders of ***A. ŠÀ* *kurummatum*** were important persons holding big allotments. Sometimes these were allotted land together with their subordinates. There are instances where the assignment was not to an individual, but to a group, as in the case where twenty-four *bur* of field were given over to the fowlers.[118] The minimum size of these allotments was one *bur*, but they were often two or more *bur*.

As a general rule, when sons reached their majority they obtained the fief of their father, and owed to the king the same service that the father had borne. The possessor who discharged the responsibilities of his fief was not normally bothered in his enjoyment of it. If, exceptionally, he was deprived of it in total or in part, he had the right to receive other territory equivalent to it.[119]

Provisions regulating the possession of fief land are also met with in the nearly contemporary Code of Hammurapi. It declared that should a fief holder abandon his allotment on account of its feudal obligations and be absent for as long as three years, whoever may have taken over the property and assumed the *ilku* was permitted to retain it. If the absentee returned after a shorter period, he might reclaim the holding and assume the obligations.[120] If, however, the absence of the feudatory was an enforced one due to capture by an enemy, his fief must be restored to him upon his return, regardless of the duration of the absence.[121]

Most of these allotments from the king were firmly excluded from sale: "In no case is the field, orchard, or house belonging to a soldier, a commissary, or a feudatory salable."[122] If a person bought such property he simply lost his investment, for the law declared that his contract-tablet should be broken and his money forfeited, while the property reverted to the fiefholder.[123] The law also prevented one from deeding such fief-land to his wife or daughter, or assigning it for any obligation.[124]

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[118] Thureau-Dangin, *RA*, XXI, p. 3, 4.

[119] *Ibid*.

[120] CH, para. 30, 31.

[121] CH, para. 27. Compare also para. 71.

Some of the fiefs could legitimately be sold. A hierodule, a merchant, or other feudatory (*ilkum aḫûm*) was permitted to sell his allotment, but in such case the purchaser had to assume the feudal obligations,[125] so that nothing was lost to the crown's administration.

Some of the administrative letters from Larsa indicate how these rules were applied in certain cases. A letter to the governor of Larsa mentions a field sold by its holder and registered to its purchaser as his ***A. ŠA* *kurummatišu***, i.e., field for the sustenance of this crown servant.[126] This would illustrate paragraph 40 in the Code of Hammurapi, which allows the sale of certain fief lands.

Another letter tells of a situation in which a commissary (*bā'irum*) bought land from a soldier (*rēdûm*),[127] who thereafter entered a claim for the land he had sold. That which would seem to justify his claim is the law which declared that a person who bought such fief land forfeited his money, while the contract was annulled. But in this case the purchaser maintained that he had bought one *bur*, but had left two *bur* to the seller. The king decided that if investigation proved this to be ~~a~~ fact, then the purchaser should keep the field he bought. Evidently the two *bur* represented the inalienable fief, while the one *bur* which has been sold was not a part of the fief but was private land subject to sale.

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[122] CH, para. 36. Thureau-Dangin, *loc*. *cit*.

[123] CH, para. 37.

[124] CH, para. 38.

[125] CH, para. 40.

[126] Thureau-Dangin, *TCL*, VII, *Lettres de Hammurapi à Šamaš-Ḫâṣir*, no. 57; transliterated and translated by the same scholar in *RA*, XXI, p. 44.

[127] *Ibid*., p. 31, no. 38. It lies outside my purpose to discuss the problem of an adequate translation for *bā'irum* and *rēdûm*.

Various suggestions have been presented to explain the stipulation against the sale of certain fief lands. It is supposed that it may have been for the protection of the tenant to prevent his creditors from reducing him to penury, which would be contrary to public policy; or, that the king preferred to have only fiefholders chosen by himself, to insure loyalty or to guarantee servants of sufficient capability to perform the services.[128] There must also have been the purpose of preventing the reduction of the number of those owing service through the accumulation of a number of fiefs into the same hands. A person holding more than one fief might find it increasingly difficult to render the services attached to each one, so that he might tend to neglect one or more of the services or merge them into one.[129]

Women were prevented from acquiring the land grants of those whose services were military in character because they couldn't do the work, and because they might marry outside the military class, thereby diverting into civilian hands land that was provided for the maintenance of military security.[130]

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[128] Driver and Miles, *Babylonian Laws*, p. 127.

[129] *Ibid.*, p. 165, 166.

[130] C. H. Gordon, *Hammurapi's Code*, *Quaint or Forward Looking*? (New

Land grants in Mari

The texts from Mari show in considerable detail that crown lands were being allotted to faithful retainers. A few examples will suffice to illustrate the policies and procedures.

Yasmaḫ-Adad, son of King Šamši-Adad of Ashur, apportioned (*inḫil*) to Yarim-Adad a field of unspecified quantity from palace land at Ḫutnim, not far from Mari. Yarim-Adad presumably received the land grant as recompense for functions performed for the court, or for services rendered.[131]

Yasmaḫ-Adad has also awarded three hundred *iku* of field to his servants the sons of Yantakim. A subordinate official wrote in complaint that half of the grant was later given to some other party. Yasmaḫ-Adad was petitioned that the subtracted portion be restored, with the clear implication that the grant had been for service (*wardūtu*).[132] A similar allotment had been made to another group, about which Yasmaḫ-Adad had already received a complaint. He, in turn, had written to his administrator to look into the matter. The administrator replied that his investigation showed that no subtraction from the field in question had taken place since he assumed office.[133]

The same letter referred to a group who had been transferred from one place to another[134] for the purpose of *corvée service* and had taken

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York: Rinehart and Co., 1957), p. 7.

[131] Boyer, *ARM*, VIII, no. 12, pp. 26, 27, with commentary on pp. 193, 194.

[132] Georges Dossin, *ARM*, V, *Correspondance de Iasmah-Addu* (Paris: Imprimerie Nationale, 1952), no. 48, pp. 72, 73.

[133] *Ibid*., no. 73, pp. 102, 103.

[134] For justification of my translating *nasāḫu* to "transfer," see B. Landsberger, "Additions and Corrections to *JCS* IX, 121-131," *JCS*, X

possession of houses and a field. The administrator complains that these people were not doing the work incumbent upon them for the property they were holding: aḫ-ḫu-šu ma-du-tum-ma ša a-na Ma-ri(ki) na-as-ḫu ù i-na li-ib-bi ma-a-tim eqlam ù bi-ta-a-tim ṣa-ab-tu mi-im-ma di-ku-tam ú-ul i-la-ku, "his numerous brothers, who have been transferred to Mari and occupy field and houses within the country, do not perform any obligation." The obligation (*dikūtum*)[135] was the service they owed in return for possession of the field.

King Šamši-Adad addressed his son Yasmaḫ-Adad on the subject of a field about which there was a complaint, and ordered, with respect to certain of those transferred for corvée, that the son give to them a field from the royal fields of Mari (*inanna ana awili*^{meš} *nasiḫi šunuti ina eqel ekallim eqlam ina Mari*^{ki} *idinšunušim*).[136]

An official wrote to Yasmaḫ-Adad about two different distributions of fields to certain ones transferred for corvée service. In one area they received eighty *iku*, in another they received fifty.[137] The same official wrote that a person had applied to him for a field, but there was none available for him around Mari, so he proposes to put the man in charge of the woods in a certain district and to give him a field in

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(1956), p. 39. For further remarks on the meaning of this word in the above context, see Hildegard Lewy, "The Synchronism Assyria-Ešnunna-Babylon," *Die Welt des Orients*, Band II (1959), p. 443, n. 1.

[135] Rivkah Harris, "The Archive of the Sin Temple in Khafajah (Tutub)," *JCS*, IX (1955), p. 97. Miss Harris publishes an Old Babylonian sale document in which the seller will maintain the obligation (*dikūtum*) of the field. She cites texts to show that *ilkum* and *dikūtum* are practically synonymous. She is supported by *CAD*, Vol. III, p. 141.

[136] Dossin, *ARM*, IV, *Correspondance de Šamši-Addu* (Paris: Imprimerie Nationale, 1951), no. 4, pp. 15-17.

[137] *ARM*, V, no. 85, pp. 116, 117.

another district.[138] Another letter from that official appeals for advice relative to the disposition of some fields for the Haneans.[139]

A certain functionary found it necessary to complain in strong terms that Yasmaḫ-Adad had promised him a field and grain, but he had received neither, although he had made repeated claims. He now protests that he has no field to cultivate, and has received no subsistence, which he beseeches Yasmaḫ-Adad to obtain for him.[140] From this case the system appears to be suffering from poor management.

One of the economic texts furnishes us with an example of how the palace expected to benefit from some of these grants. A grantee who had received a field from King Zimri-Lim sent to the king's functionary one hundred sheep. The contribution is signified with the logogram MU.DU, which in this case must have stood for an obligatory contribution expected from the holder of the field.[141]

It appears that Šamši-Adad, king of Ashur, had decided to use the policy of land grants to help stabilize certain areas of the realm which he did not have firmly in control. Accordingly, he commanded Yasmaḫ-Adad to negotiate with the leader of a band of marauders who had been crossing the Euphrates and plundering the flocks. Yasmaḫ-Adad was to promise the leader some land out of palace estates if he would cease the pillaging and put himself in the good graces of the king.[142] If

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[138] Ibid., no. 86, pp. 116-119.

[139] Ibid., no. 88, pp. 120, 121.

[140] Ibid., no. 22, pp. 39-41.

[141] Jean Bottero, ARM, VII, Textes économiques et administratifs (Paris: Imprimerie Nationale, 1957), no. 137, p. 54, with commentary on the logogram, p. 209.

[142] Dossin, ARM, I, Correspondance de Šamši-Addu (Paris: Imprimerie Nationale, 1950), no. 91, pp. 162, 163. The text had not been so

Yasmaḫ-Adad could locate these men on palace land, he might not only stop their raids, but perhaps also have them available for military service.

In respect to the policy of land grants, the effort to reward properly every servant of the crown to the satisfaction of all concerned must have constituted a big problem. Letters from provincial administrators indicate that there were complaints of mistreatment, and these sometimes required royal attention. There were occasions when fields were taken from one party and given to another,[143] a procedure which could not have pleased everybody. One gets the impression that the occasions were numerous when the king was required to settle disputes over the possession of fields.[144]

Of special interest for our purposes are the sources which indicate that land was being apportioned to troops in reward for military services rendered. It is probable, moreover, that a condition of their continuing possession was a readiness to respond to the call for further service when the occasion might demand it.[145]

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understood by Dossin, but Boyer, ARM, VIII, p. 197, suggested this interpretation on the basis of the usage of naḫālum in the juridic texts. Line 6' of the text cited, reading niḫlatam inaḫḫil, should be translated "he will allot him a portion."

[143] ARM, I, no. 56; Charles F. Jean, ARM, II, Lettres diverses (Paris: Imprimerie Nationale, 1950), no. 32.

[144] ARM, I, no. 104; ARM, II, no. 114.

[145] Jean has denied that any system existed at Mari equivalent to what was known at Babylon, where the king supported troops on royal domain. He maintained that the only inducement for the soldiers of Mari was a share in the spoils. Charles F. Jean, "L'armée royaume de Mari," RA, XLII (1948), p. 140. A more adequate view is expressed by J. R. Kupper, "Un gouvernement provincial dans le royaume de Mari," RA, XLI (1947), p. 170, who observed that certain elements of the population were drawn upon to furnish service to the crown in response to grants of land.

The most direct notice of land grants to troops is furnished by letters dating to the period of Assyrian control of Mari, when Šamši-Adad instructed Yasmaḫ-Adad on the granting of fields to soldiers. At the close of a letter dealing mostly with a different subject, the king spoke concisely about the census of troops and the measurement of fields.[146] The way these two activities are linked together make it certain that they are parts of one operation: *šanitam tebibtum iššakkan ṣabum utabbab ù eqlētum* (ḫá) *imma[d]dada ù [i]turruma [eqlēt]im* (ḫá) *ana mātim izuzzu*. "Another thing, the census will take place, the troops will be mustered and the fields will be measured. They will again divide the fields in the land." The king instructed his son to send competent scribes to aid in the work of taking the census and measuring the fields.

Another of the king's letters[147] has more to say on the subject of the enrollment of troops and the allotment of land grants. Šamši-Adad counselled his son not to take a census of the Benjaminites,[148] since the action would create dissatisfaction among their relatives on the other side of the Euphrates in the country of Yamḫad. The Benjaminites were to be assembled in order to participate in an expedition of the king, with each "*mukhtar*" responsible to see that his quota of men was filled. The command not to make a census of them was emphasized by repetition.

The same tablet answers a question Yasmaḫ-Adad had raised concerning the possibility of dividing the fields along the bank of the

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[146] *ARM*, I, no. 7, lines 32-36.

[147] *ARM*, I, no. 6, pp. 32, 33.

[148] Although there is a question about the reading of this name (possibly *mārē-iamina*), I have chosen to use the form commonly employed.

Euphrates River for possession by the Hanean troops from the encampments. After conferring with his advisors the king declared that the fields in question were not suitable for the purpose and that to so use them would result in much discontent. Yasmaḫ-Adad was therefore not to divide those fields nor to overturn the long-standing arrangement, but only to survey the field of a deceased person or a fugitive and give that to him who had no field. But along with this, the king's instructions concerning the matter of the census were explicit. He told Yasmaḫ-Adad: "make that *tēbibtum* (census) precise and accurate, cause the troops to ascend, let your census be exact."[149] Those Haneans who had formerly held fields along the Euphrates should be permitted to retain them.

A census of the Benjaminites is known, however, from the time of Zimri-Lim.[150] Kibri-Dagan wrote to his king that with respect to the census, the "*mukhtars*" (*awīlu meš suqāqušunu*) of the Benjaminites had come; he had established the officials for the census; and these had inscribed the names of the troops. The tablet containing the names of the troops from each town had been dispatched to the king.

At another time Zimri-Lim had instructed Kibri-Dagan to muster the troops of his district. Kibri-Dagan replied that in certain towns which he named he had appointed the census officials. He had made them take the oath and then they registered the troops.[151] Some care was exercised in the arrangement of the lists so that the king would know just what military strength was represented by them. The administrator explained that the men whose replacements went off to Babylon while they remained behind had been recorded separately; that the men not called up for a campaign, whether officials or free citizens, had been recorded separately; and that the old men unable to go on campaigns had been recorded separately.[152]

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[149] Lines 39-41. For a portion of this quotation I have adopted the translation given by E. A. Speiser, "Census and Ritual Expiation in Mari and Israel," *BASOR*, no. 149 (Feb., 1958), p. 20, note 12.

[150] *ARM*, III, no. 21, pp. 40, 41.

[151] *Ibid.*, no. 19, pp. 36-39.

Numerous other references to the census occur in the Mari documents, showing that it was generally a carefully planned and executed operation. Its principal object was the provision of man-power for military needs. Except for the two texts cited above,[153] however, only one other reference directly links together the process of taking the census with the giving of land grants; but these two are sufficient to show a strong connection.

It may be, however, that the Akkadian words for the census taking, both the noun and the verb, provide an indirect link with the matter of land grants. That is to say, the terms may suggest that a person who was subject to the census was in a position to hope for a land grant.

The verb *ebēbum* and the noun *tēbibtum* are the terms used in reference to the census taking. There can be no doubt that the words are translated in their proper sense. Not only does such a translation yield excellent sense in the various contexts, but such terms as *paqādum* (to muster) and *šaṭārum* (to inscribe), used to describe the conducting of a *tēbibtum*, make the meaning certain.[154]

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[152] *Ibid.*, lines 23-31. The translation is essentially Speiser's, who has emended the reading given by Kupper. *BASOR*, 149, p. 20, note 10.

[153] *ARM*, I, nos. 6 and 7.

[154] Kupper, "Le recensement dans les textes de Mari," *Studia Mariana*, ed. André Parrot (Leiden: E. J. Brill, 1950), pp. 100-102. Since *ebēbum* in the intensive stem means to purify, some cultic connection with the census has been sought; *Ibid.*, p. 103. Speiser attempts

The tēbibtum (lit., a clearing) evidently imposed a certain duty on a subject, usually military service, but at the same time rendered him exempt from some other obligations.[155] Troops, we have seen, were often given grants of land, and it was probably in the possession of his land that the soldier enjoyed his exemptions.[156] Just as in Babylonia, the land grant was his sustenance, and in reward for his military services he was exempt from taxation and other obligations. He could not sell the land, but it was heritable. According to this hypothesis, being a subject of the tēbibtum placed a person in a position where he might receive a grant of land. When Šamši-Adad counselled his son that the Benjaminites were not fitting subjects for the census, it was probably because he realized the potential danger of implying through the census that these fiercely independent people now held their land from the king.

Whether the subject of a tēbibtum in Mari was "cleared" with respect to the land he held, it cannot be doubted that the tēbibtum concerned itself with granting of land. Šamši-Adad wrote to his son:

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to find a parallel between the Mari and the Israelite census rituals, and takes the Akkadian ubbubum and tēbibtum as the semantic equivalents of the Hebrew kippur and kōper; BASOR, no. 149 (Feb., 1958), pp. 21-23. However, it is not necessary to find a cultic connection, since the Akkadian verb is used in a number of more secular ways. See CAD, Vol. IV, pp. 4-7.

[155] Gordon's interpretation of ARM, I, no. 6, in which he makes the tēbibtum comparable to the Hebrew nāqī as in Deut. 24:5 (i.e., exempt), and therefore equal to a military discharge, cannot be right; since that meaning does not fit the context in other places where the word is used in the same way. C. H. Gordon, "Šamši-Adad's Military Texts from Mari," ArOr, XVIII (1950), p. 205.

[156] To derive this meaning from tēbibtum accords with the intensive use of ebēbum in the sense of to free from obligation, CAD, IV, p. 6. The synonym zakū is frequently used in the Akkadian texts from Ugarit in documents that declare a person free of certain obligations with respect to the property he holds, PRU, III, p. 230, but esp. pp. 68, 70, 107.

> The people of your district have not been cleared [censused] for a long time and the day of clearing [census] is overdue, but since at the moment you cannot clear [census] the people, you must certainly clear [census] the people on your return (from the war), till then only replace (the fields of) the dead and the missing![157]

The instruction to replace only the fields of the dead and the missing until the census could be taken implies that at the time of the census there would be a general reassignment of the land grants. This was stated explicitly in a text already noted.[158] The command also indicates that the king did not want any unassigned land lying idle when it might be occupied by a soldier obligated to service on call.

While I have understood the _tēbibtum_ to be an act that was principally secular in aim and character, I have by no means divested it of all religious or ritualistic connections. It is doubtful if such a severance from religious concerns could be possible in that society, but apart from that consideration, the texts reveal that the officials who conducted the census (called _ebbum_ or _mubbibum_) were first made to swear an oath by the gods and the king.[159] Even though the official was not a priest, or even a permanent official, but someone appointed on the spot,[160] the oath presented a religious element.

It is probable also that the soldiers themselves were bound to the sovereign by oath at the time when they were enrolled, or censused; although there is no direct information to that effect. The Hittite soldiers' oath has been preserved for us,[161] and perhaps it is only that the accidents of discovery have not provided one from Mesopotamia.[162]

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[157] _ARM_, I, no. 42, lines 15-21. The translation is quoted from _CAD_, Vol. IV, p. 6. The bracketed words are my own.

[158] _ARM_, I, no. 7, lines 32-36.

[159] _ARM_, III, No. 19, line 17.

[160] Speiser, _BASOR_, no. 149, p. 19.

All of the semantic connections between the words ubbubum and tēbibtum and the military policy at Mari may not be traceable. The important thing is that the Mari kings are known to have censused their subjects with the purpose of acquiring soldiers and other servants for the crown, and that land grants were given in fief to these subjects in compensation for their services. Possession of such land obligated a person to service, and the census was renewed periodically to insure that such land was in the hands of those who were capable of rendering the required services.

Fiefholding in Israel

The reason given in Lev. 25:23 for the prohibition of land sales in Israel was that the land belonged to God, and the Israelites were only strangers and sojourners. The terms stranger (gēr) and sojourner (tōšāḇ) in themselves indicate the temporality of the people's relation to the land. A gēr was a person who for some misfortune or other reason left his original place where he had legal status, and dwelt where he was curtailed in his civic rights of real property, in partaking in worship, etc. He was a newcomer without inherited rights.[163] A tōšāḇ was a sojourner without the rights of citizenship, whose status was apparently of a more temporary and dependent kind than the gēr.[164] One scholar translates tōšāḇ with the word Beisass, a squatter who resides somewhere without civic rights.[165] Another even goes so far as to render tōšāḇ as Lehnsträger, feudal tenant.[166] While a strict lexical study of the term may not warrant the translation feudal tenant, other considerations will show that no violence would be done to the text of Lev. 25:23. Yahweh was the ultimate owner of the land, and the people held the land as by grant from him.

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[161] ANET, p. 353, 354.

[162] Noting that the verb ububbum has been used at times to refer to the act of clearing oneself of an accusation by means of an oath, Professor G. E. Mendenhall has suggested to me that the tēbibtum was the soldier's oath whereby he cleared himself with respect to the sovereign by swearing his loyalty and participation in warfare. (For the use of the verb in this sense, see CAD, Vol. IV, p. 7.) Comparison with the Hittite soldier's oath cited above shows that such could have been a very elaborate ritual. It must have been so generally in the ancient world; the Romans, for instance, indicated the ritualistic character of their soldier's oath by giving it the term sacramentum. Charlton T. Lewis and Charles Short, Harper's Latin Dictionary (New York: American Book Company, 1907), Vol. II, p. 1612.

The same text declares that the land could not be permanently alienated, since it was not theirs to sell. As has been shown, certain land in Babylonia was inalienable, the reason being that the people who retained it held it in fief from the king. The comparison leads to the thought that Yahweh was king in Israel,[167] and the people conceived of their holdings as fiefs.

We have observed that the property at Nuzi was also inalienable in principle, but that a legal fiction had been created to circumvent the prohibition. References in the Nuzi documents to the ilku (service) led to the conclusion that the rule against land sales was likewise due to feudalism; or rather, that a feudalism no longer operative at Nuzi had given rise to the fiction of the "sale-adoptions." Since there are so many other grounds of comparison between society in Nuzi and in early Israel, this area of correspondence strengthens the view that Israel regarded its landholdings as fiefs from Yahweh.

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[163] Koehler and Baumgartner, op. cit., p. 192. BDB, p. 158.

[164] Koehler and Baumgartner, p. 1024. BDB, p. 444.

[165] Buhl, op. cit., p. 874.

[166] Adolf Damaschke, Geschichte der Nationalökonomie, Dreizehnte Auflage (Jena: Gustav Fischer, 1922), Band I, p. 6.

[167] I Sam. 8:7

The constitutive element in the formation of Israel as the people of Yahweh was the Mosaic covenant. The form of this covenant has been compared successfully with the suzerainty treaties of the second millennium surviving from the Hittites.[168] Each family, or perhaps each individual, recognized the suzerainty of Yahweh and acknowledged themselves his vassals. The whole relationship harmonized well with the concept of God as the owner of the land and the people as his feudal tenants.

In those Hittite vassal treaties that have been compared with the Mosaic Covenant, one very pertinent stipulation was the requirement for the vassal to participate in an offensive war which the great king might deem necessary against the vassal's neighbors.[169] It seems quite clear from the following considerations that participants in the covenant with Yahweh were expected to engage in warfare, especially in the appropriation of more land. In fact, participation in war was required in order to justify the enjoyment of land by those Israelites already appointed to fields.

The situation that developed in Transjordan amply illustrates the point. After the defeat of the two Amorite kings, Sihon and Og, the peoples constituting the tribes of the Reubenites, the Gadites, and a half-tribe of the Manassites had possession of Transjordan north of Moab.

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[168] G. E. Mendenhall, "Covenant Forms in Israelite Tradition," *BA*, XVII (September, 1954), pp. 52-61.

[169] *Ibid*., p. 59. Viktor Korošec, *Hethitische Staatsverträge*, *Leipziger rechtswissenschaftliche Studien*, Heft LX (1931), pp. 72-74. Cf. Albrecht Goetze, *Kizzuwatna and the Problem of Hittite Geography* (New Haven: Yale University Press, 1940), p. 59.

However, they were expressly commanded to participate in the taking of the land west of the Jordan. In fact, they were to lead the assault; their wives, children, and possessions were to be left in Transjordan while they fought along with their fellow Israelites in the appropriation of the land west of the Jordan. After this was accomplished they were to be free (n̲ā̲q̲î̲) to return to their holdings in Transjordan.[170] Of the passages cited on this point, the texts in Num. 32 are especially pertinent, since they most clearly show the obligation to do battle for Yahweh their king if they were to enjoy their holdings in Transjordan rightfully. Repeatedly they were told that they must go armed before Yahweh to the battle to drive out his enemies if they were to possess their own lands without guilt.

The appearance of n̲ā̲q̲î̲ in Num. 32:22 suggests that the Israelites' obligation to warfare for the enjoyment of his land had the binding quality of an oath. The root as a noun or a verb is several times in the Old Testament linked with the taking of an oath. According to Gen. 24:8, 41, the servant of Abraham was to be free (n̲ā̲q̲ā̲h̲), by making his best efforts to fulfill his promise. Num. 5:19 presents the ceremony whereby a woman charged with adultery might clear herself by taking an oath. If not guilty, she was to be free (n̲ā̲q̲ā̲h̲, in niphal) from the curses of the oath. The third stipulation of the Decalogue declared that the person who swore a false oath, that is, who took the name of Yahweh falsely, would not be cleared, or freed (n̲ā̲q̲ā̲h̲, in piel) by Yahweh.

In the light of the above, the language of Num. 32:20-23 implies an oath, or an agreement of similar binding force. If they take up arms to go before Yahweh to war, and if they cross over Jordan before Yahweh until he drives out his enemies and the land is subdued before him, then they shall be freed (nāqî) of their obligation from Yahweh and from Israel. If they do not do this, then they sin against Yahweh. To say the latter as it would have been said in Mari, each would be a bēl arnim.[171]

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[170] Deut. 3:18-20; Josh. 1:12-15; 4:12; Num. 32:5-6; 16-33.

It was noted previously that as the control of Palestinian soil by the Israelite community expanded, their numbers were greatly augmented from the indigenous population. For those new converts (who had to become members of the covenant community and accept the stipulations[172]) it was a matter, so far as land tenure was concerned, of throwing off the control of the Canaanite landlords whom they had served as vassals, and acknowledging only Yahweh as the sole owner. They may oftentimes have come to possess the field which they had tilled formerly; but now they held it as a fief from Yahweh, with the obligation to fight when the occasion required, and to keep the stipulations of the covenant.[173]

The census lists of Num. 1 and 26 point also to the conclusion that the Israelite warrior looked upon his military service as the means whereby to acquire a plot of land.[174] Both lists, but especially chapter 1, stress that those who were censused were those twenty years of age or upward who were able to go forth to war. The list in chapter 26 is immediately followed by the instruction that it was to be among the warriors included in the census that the land was to be divided (26:52f). The great similarity between the Israelite census and the Mari census has been remarked.[175] The Mari soldier received his land grant as a fief from the king; the Israelite acknowledged his as from Yahweh.

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[171] ARM, II, no. 48.

[172] The only ones to make league with Israel during this period without becoming members of the covenant community were the Gibeonites, but this was accomplished by fraud.

[173] I am obligated to Professor G. E. Mendenhall for considerable help at this point.

[174] The census lists in Numbers reflect very much the same situation as appear in the Mari texts discussed above. They must surely indicate the military situation in Israel as it was before the monarchy. This has been well established by Mendenhall, "The Census Lists of Numbers 1 and 26," JBL, LXXVII (1958), pp. 57-60.

To support the idea that the land was distributed in the days of the confederation with the viewpoint that the land belonged to God and was let out to holders as from God, observe Josh. 19:51. This text, which occurs at the end of the lengthy description of the allotment to the various tribes, remarks that the division and assignment of the allotments occurred at the sanctuary in Shiloh before Yahweh. The religious associations in the distribution doubtless emphasized the obligations that the recipient owed to Yahweh, military as well as ethical. The covenant renewal at Shechem[176] also implies that the land was held on condition of faithfulness to Yahweh.

The history of the confederacy indicates that the obligations to warfare were not always honored by those who acquired the allotments. The Song of Deborah (Jud. 5) indicates that in the battle with Hazor and their confederates there was not concerted action from all the tribes. The tribes of Zebulun and Naphtali bore the brunt of the battle, while certain tribes are said to have shirked their responsibility, and others are passed over in silence.

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[175] _Ibid_. See also Speiser, _BASOR_, no. 149, pp. 17-25.

[176] Josh. 24:1-28, see esp. v. 28.

Judges 21:8f. reports a punitive expedition against the town of Jabesh-gilead for having failed to send a contingent of soldiers to Mizpeh when the tribes were mustered (*yiṯpāqēḏ*) in preparation for the assault against Benjamin. The measures taken were drastic and ruthless.

The call to muster at Mizpeh was dramatically effected by the dismemberment of a human corpse (Jud. 19:29-20:1). A similar mustering was accomplished later in the days of Saul after the king had dismembered and distributed a yoke of oxen. In order to get immediate results, it was evidently necessary to reinforce the average landholder's sense of obligation with fear. A similar situation is observable in the texts from Mari. On an occasion when the Haneans refused to assemble for a military expedition, and thereby violated the oath, the king's administrator counselled that they sever the head from one of the criminals and circulate it among the towns of the district so that the men would fear for the consequences of their disobedience and quickly assemble.[177] In this case too, coercion was required to motivate men who were already obligated by vassalage and by oath.

The Jubilee and Related Laws

Society in ancient Israel was relatively democratic when compared with the more urbanized civilization of Mesopotamia, or with Egypt. The ideal in ancient Israel was for every family to have its own land, from which it was to draw its sustenance. Yahweh was the only king, and a high degree of freedom was to be preserved for every Israelite. Israelites were not to be enslaved to one another, but it was permissible to hold slaves from among other peoples (Lev. 25:39-46).

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[177] *ARM*, II, no. 48.

Such, at least, was the ideal of pre-monarchic times.[178] To attempt any realization of it, however, there had to be devised means to prevent the extremes of wealth and poverty, and to avoid the development of an extensive latifundism. The jubilee and certain other related customs functioned to contribute to the high degree of personal as well as tribal independence characteristic of the age.

The sabbath year and the law of release

First mention of the sabbath year is in the covenant code (Exod. 23:10-11), where it is stipulated that after six years of cultivation the land was to lie fallow in the seventh. This included not only the field, but also the vineyard and the orchard. The purpose of this rule was at least in part humanitarian, for the volunteer crop was to be for the poor of the people, as well as for the wild beasts. Obviously, however, the sole motivation was not humanitarian; for if the volunteer crop of a fallow field would benefit the poor, how much more would the harvest of a regularly cultivated crop.[179]

Another law to be observed every seventh year was that of the release (Deut. 15:1-4). The Hebrew word for this release is *š^{e}miṭṭāh*, and since the sabbatical year is described by a verbal form of this uncommon root in Exod. 23:11, it is possible that the two passages deal with different aspects of the same release. The Deuteronomy passage has to do with a form of debt release, and this fact also suggests a close connection with the sabbatical year. While no debt suspension is mentioned for the sabbatical year, there may be one implied, since the debtor could scarcely pay his debts while his land lay fallow.[180]

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[178] It may be objected that Lev. 25 in its present form does not describe the actual practice of pre-monarchic times. However that may be, the chapter reflects a concern to preserve ideals that existed in the days of the judges. It is scarcely conceivable that views such as the inalienability of real estate could have had their origin in the days of the monarchy or later. See below.

[179] Neufeld suggests that the sabbatical year had its origin in Israel's early days when there was common land ownership, but with individual rights of usufruct on separate portions which were redistributed every seven years. The system was early superceded by private possession of separate fields. Edward Neufeld, "Socio-economic Background of Yōbēl and Š^{e}miṭṭā," *Revista degli Studi Orientali*, XXXIII (1958), pp. 68, 69. But the preceding section on the census in Israel has shown that from the beginning of the tribal confederacy private heritable fields were held.

The release (*š^{e}miṭṭāh*) required that a creditor give up his claim to whatever he had loaned to his neighbor, demanding no payment from him. The essential part of the law is contained in the following: "every creditor shall release what he has lent to his neighbor; he shall not exact it of his neighbor, his brother, because the LORD'S release has been proclaimed."[181] It is further explained in the next verse that the lender's hand shall release whatever of his property is with his brother, the creditor.[182] To what extent the *š^{e}miṭṭāh* was observed is completely unknown, but the law was intended to maintain in Israel a degree of economic independence without which other freedoms could not be preserved.

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[180] *Ibid*., pp. 68, 62.

[181] Deut. 15:2, RSV.

[182] The law has been understood differently by H. M. Weil, "Gage et cautionnement dans la Bible," *AHDO*, II (1938), pp. 171-241. He understands the *maššeh* to be not the *loan*, but a sort of antichretic pledge to secure *the loan*. The creditor held the pledge, usually a member of the debtors family, until the loan was repaid. The pledge then served not merely as a guarantee of repayment, but as a mode of satisfaction for the creditor, who could recover his capital outlay through the labor of the pledge. The labor not only provided for the interest on the loan, but accomplished a gradual amortization of the debt as well; so that the pledge should be released after six years of service. North, who supports this view, *op. cit*., pp. 181, 190, 197, thinks the pledge could also be land which *the* creditor held until the debt was satisfied. Weil's view of the release seems to stem from a comparison of antichretic loan agreements known from Nuzi, Assyria, and Alalakh. (See Paul Koschaker, *NKRA*, pp. 160, 161; Speiser, "New Kirkuk Documents Relating to Security *Transactions*," *JAOS*, LII (1932), p. 356f.; Wiseman, *Alalakh Tablets*, nos. 18-28, *32, 36*, 47, 49; Speiser, "The Alalakh Tablets," *JAOS*, LXXIV (1954), p. 32.) But the Israelite law does not refer to *this* arrangement, since *nāšāh* means to lend (Deut. 24:10,11), and *maššeh* refers to the thing *lent*.

The year of jubilee

The law concerning the year of jubilee is defined in Lev. 25:8-55, and 27:16-24; apart from these references little or nothing more is known about the institution from the Old Testament.

The word "jubilee" (Hebrew *yōḇēl*) has no essential connections with the idea of joy or exultation. Although the lexicons are in accord that the word means "ram's horn,"[183] there is probably no foundation for this meaning, either. The noun is most likely derived from the root *ybl*, to bring; but whatever the etymology, the word is clearly a synonym for *d^{e}rôr* and *š^{e}miṭṭāh*, and means a release. The Septuagint rendering, *'aphesis* is therefore quite correct.[184]

According to this law the land itself was never to be sold in perpetuity, but only the produce or yield of the land, and that only for a limited time. In the fiftieth year, i.e. following the seventh sabbatical year, a release was to be proclaimed, and the property was to revert to the original owner or to his heir. Thus the buying really was a leasehold for a certain number of years. The payment was therefore arranged according to the number of years which had transpired since the jubilee, so that the "buyer" paid a royalty for the number of years left until the next year of jubilee (Lev. 25:14-17).

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[183] *BDB*, p. 385; Koehler and Baumgartner, *op. cit.*, p. 371; Buhl, *op. cit.*, p. 292.

[184] North, *op. cit.*, pp. 96-108, gives a lengthy criticism on the word *Yōḇēl* and justifies the translation "release." His table on p. 107 shows that the context best favors this meaning.

This prohibition of a permanent sale was on the basis that the property was not actually the possessor's to sell. He could not sell what he did not own. Thus the jubilee was another expression of the concept that Yahweh owned the land (Lev. 25:23).

Houses in an unwalled town were to be treated in the same way as arable land; if they were sold they were to be returned to the original owner in the year of jubilee. But the sale of houses in walled cities was dealt with differently; houses which were sold there were subject to the law of redemption for the duration of a year, but thereafter the sale became final, and the house was not restored in the jubilee.

It was quite necessary that this distinction be made between the sale of rural property and that within the walled cities. The difference was simply a recognition that the walled cities were still mostly Canaanite and adhered to the Canaanite social and economic background rather than to the Israelite. No purpose would have been served in overturning the long-entrenched custom within the cities, since the concern of the jubilee was to preserve the independence of the Israelite farmer.

Only in the case of property dedicated to Yahweh was it proper to alienate agricultural land permanently, a practice acceptable because the land belonged to him ultimately anyway. If a person donated to the sanctuary a part of his patrimony, he might redeem it for himself by paying the value assessed by the priest. A field donated in the jubilee was to be assessed the full value, whereas if it were donated some years later, the value of the intervening crops was to be subtracted from the redemption price. But if the donated field was not redeemed, there was no returning of such a field to its original owner in the jubilee, as with other alienated property. The field belonged inalienably to the priest after the jubilee. However, if a person donated to the sanctuary a purchased piece of property and did not redeem it, the property returned to the person from whom it was purchased at the time of the jubilee (Lev. 27:17-24).[185] Apart from this exception, the sale of the usufruct of rural property came to an end either by redemption[186] on the part of the seller or one of his kinsmen, or by the release proclaimed in the year of jubilee (Lev. 25:25-28). The proclamation was announced with the sounding of trumpets throughout the land.[187]

The so-called sale of land under the law of jubilee could also be viewed as a sort of antichretic loan or mortgage. The buyer had the usufruct as well as the custody of the property, and the usufruct supplied not merely the place of interest payments, but constituted also a gradual amortization of the principal. By the time of the release at the jubilee the creditor could possibly be fully repaid, since the amount paid for the field was always adjusted at the time of the sale according to the number of years remaining until the jubilee.[188] That the usufruct of the passing years provided a gradual amortization of the principal may be seen from the portion of the law which had to do with redemption. If the seller of one's property wished to redeem his land sometime before the jubilee year, then he was to count the years that had transpired since the date of the sale and subtract the proportionate amount from the sum that had been given him. The remainder he had to repay in order to redeem his field (Lev. 25:27). One may infer from this that if the field was not redeemed but was released in the jubilee, the temporary "purchaser" had recovered his investment.

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[185] North, op. cit., p. 34; Boaz Cohen, "Ususfructus in Jewish and Roman Law," RIDA, (1954), p. 177.

[186] I reject Pedersen's view (op. cit., p. 88) that Lev. 25 has patched together two mutually antagonistic laws in uniting the law of redemption with the jubilee. The result, if such were the case, would have been too awkward to have been perpetuated by those who preserved the tradition.

[187] North suggests that the sounding of trumpets was a sort of šudūtu such as was known at Nuzi, i.e., a public proclamation required as a kind of registration formality prerequisite to the exchange of property administration. Op. cit., p. 174.

[188] Ibid., p. 180.

The question has been raised whether the jubilee was really intended to be repeated at fifty year intervals.[189] Lev. 25:15, 16, which indicates how the land which might be sold was to be valued, certainly implies repetition of the release. The valuation was to be set according to the number of years that had passed after the jubilee, because what was actually to be sold was the number of crops to be taken from the land. This expression "the number of crops" can only mean the number of crops until the next jubilee. There is no doubt then but that the jubilee was intended to be repetitious.

There appears to be no way of knowing how strictly the legislation concerning the jubilee was observed in Israel. There is no historical record to the effect that the law was ever carried out even once. But the absence of any mention of such observance should not be taken as evidence that the law was never observed, since the event could have escaped mention in any extant records.

It may be objected that the observance of a jubilee would constitute too severe an economic upheaval ever to have been put into practice. Other factors, however, might have worked to soften the effect of such a change. The acceptance of the Exodus and Deuteronomy seventh-year practice, the stress on kinsman-redemption and other possible means of pre-jubilee release could already have rehabilitated many of the bankrupt peasants.[190] The truth is, of course, that we do not know how severe the change might have been, since there is no record of the law ever having been observed. But even if the effects of the observance be imagined as very strenuous, denial of the practice on that ground would not be admissable. For whatever the effect of the jubilee on the Israelite economy, it probably was no more severe than that of similar customs observed in certain communities in Mesopotamia. It is to these parallels that attention is now directed.

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[189] Ibid., p. 207. North thinks the release was not to be repeated. "The legislator intended the 50-year respite for once: a single fresh start for the bankrupt Israelite."

Antecedents in Mesopotamia to the jubilee and the law of release

Up to the present time no custom in Mesopotamia has been found which may be said to closely parallel the release (*šᵉmiṭṭāh*) or the jubilee (*yōḇēl*) in Israel. There are, however, parallels of a type which may be referred to as antecedents to those particular customs in Israel, since they antedate the Israelite institutions and have striking points of comparison. It may be said that Israel employed these features, long known in Mesopotamia, but molded them into new institutions quite peculiar to Israel.

It was remarked above that the restricted sales in Israel subject to the release in the year of jubilee were in the nature of antichretic loans. A transaction well known at Nuzi was very similar. The documents on which these are recorded are referred to as *ditennūtu* tablets, and may be characterized as follows: when A. loaned B. a certain sum, B. gave a piece of real estate as security for the loan but retained ownership of the property thus given. The creditor got possession but not the ownership of the land, and that only for the duration of the loan. The interest on the loan must have been the usufruct of the land.[191] This compares to the situation in Israel reflected in Lev. 25. Repayment of the loan would be equivalent to redemption. The feature that is missing is the provision for a release after so long a time in the event that the land is not redeemed, i.e., the loan repaid. Presumably the loans were for a shorter duration.

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[190] *Ibid.*, p. 209.

The proclamation of the release in Israel with the sounding of trumpets, and the release itself, appear to have their antecedents in Nuzi also. In documents recording various types of transactions involving a transfer of property, there occurs characteristically an expression to the effect that the tablet was drawn up after the proclamation.[192] The phrase is usually written: _ina_ _arki_ _šūdūti_, "after the proclamation." The meaning "proclamation" was assigned for _šūdūtu_ by deriving the term as an abstract noun from the causative stem of the root _ēdū_,[193] literally, a causing to know. It was an act of publicity, needed wherever the status of some property was to undergo change. "It is a citation, requiring all who may have claims upon the property involved to present them, doubtless within a certain period of time, to the authorities; if such claims are not forthcoming, the property is released, and the transaction becomes valid."[194]

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[191] Francis Rue Steele, _Nuzi Real Estate Transactions_, _American Oriental Series_, XXV (Philadelphia: 1943), p. 47. North, _op. cit._, p. 65.

[192] Speiser, _AASOR_, X, p. 12. C. H. Gordon, "Paralleles nouziens aux lois et coutumes de l'Ancien Testament," _RB_, XLIV (1935), p. 38.

[193] Speiser, _AASOR_, X, p. 9, citing Koschaker and Landsberger.

[194] _Ibid._, p. 12.

An interesting variation of this expression is provided in one text which concludes: *tuppu ina arki andurāri ina bab abulli ša ^{al}Matiḫa šaṭar*, "The tablet was written after the release in the entrance gate of Matiha."[195] The term *andurāru* is taken as a cognate of the Hebrew *d^{e}rôr* and translated in the same way as a release. (The Hebrew term *d^{e}rôr* is used in Lev. 25:10 to describe the year of jubilee.) The *šūdūtu* therefore is partially explained by the word *andurāru*, although they are not taken to be exactly synonymous. The *šūdūtu* (proclamation) led to the *andurāru*, the release required for the official consumation.[196] The two terms are, however, used practically as synonyms in such an expression as the following: *ina arki* ^{ki} *šūdūti ina arki andurāri*.[197]

There does not appear to be enough information to allow a more complete definition of the *šūdūtu*[198] and the *andurāru* in the Nuzi documents. One cannot say therefore, to what degree the release at Nuzi resembled the release in Israel. However, it seems certain that the terms *šūdūtu* and *andurāru* were stipulated for business reasons, and that there was some good reason of advantage for one of the contracting parties to make the agreement *after* and *not before* the *šūdūtu* or the *andurāru*.[199] It was especially important to have the document declare that the agreement was **consummated** after the release; otherwise one party might seek to take unfair advantage by declaring that his obligations had been invalidated by the release.

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[195] *Ibid*., p. 61, 62.

[196] *Ibid*., p. 12.

[197] Gordon, *RB*, XLIV (1935), p. 39; Hildegard Lewy, "The Nuzian Feudal System," *Orientalia*, XI (1942), pp. 26, 27.

[198] Gordon, *ibid*., suggests deriving *šūdūtu* from the root šwṭ, subtracting the abstract ending from the noun form. Noting the well-known alternation in Akkadian between m and w, he thinks the Hebrew cognate may be šmṭ, root of the noun š^{e}miṭṭāh. There seems to be the effort to make *šūdūtu* and *andurāru* the equivalent of Hebrew *š^{e}miṭṭāh* and *d^{e}rôr*. The better etymology for *šūdūtu* is to take it from *edū*, as given above.

[199] Gordon, *RB*, XLIV (1935), p. 39.

Two texts do indeed reveal a strange development. A brother delivered his sister to some form of servile adoption (sistership) to another man. This took place after the *šūdūtu*. Afterward it seems that the sister had been liberated by the *andurāru*, after which this same brother gave the same sister as a wife to the same person.[200] Without making the *šūdūtu* and the *andurāru* to be different kinds of releases, one can see that the first relationship (sister) had been annulled by the *andurāru*, so that the new relationship (wife) was established thereafter. One scholar has interpreted these two tablets to record the same agreement and the same event, so that *aḫatu* (sister) and *aššatu* (wife) mean in these texts the same thing.[201] While this is conceivable, it seems strange that there should be two texts recording the same event, written in two different towns, in addition to the marriage contract itself.

The *andurāru*, not clearly definable from the Nuzi texts, is better understood with the help of several documents from Ḫana, a small kingdom on the middle course of the Euphrates.[202] One text is from the time of Hammurapi of Babylon and deals with the transfer of a *bītum* (house and adjacent property) located at Bidda, a suburb of Tirqa.[203] The property was temple and crown property which King Išarlim gave to a servant. The second clause of the tablet states that "the house is a possession not subject to claims nor subject to release (la andurārim)." The fact this clause appears implies that, without it, the property which the king gave to his servant might have been thought revertible to the king or to an original owner at the time of a release.[204]

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[200] *Ibid.*, p. 40, note 1, and citing texts in *Harvard Semitic Series*, V, nos. 69 and 25. These texts are given in transliteration and translation in Speiser, *AASOR*, X, pp. 60-62. A third text giving the marriage contract itself is also included, p. 59.

[201] Paul Koschaker, "Fratriarchat, Hausgemeinshaft und Mutterrecht in Keilschriftrechten," *ZA*, XLI (1933), p. 14.

[202] Julius Lewy, "The Biblical Institution of D^{e}rôr in the Light of Akkadian Documents," *Eretz-Israel*, V (1958), pp. 21-31.

[203] Thureau-Dangin, *TCL*, I, *Lettres et contrats de l'époque de la première dynasty babylonienne* (1910), no. 237, lines 15, 16. The text

A similar gift, made by King Ammibail of Ḫana four or five reigns later, gave to a servant two parcels of field. Exactly the same clause declares that the properties are not to be subject to claims nor to a release (eqlum naṣbum ša la baqrim ù la andurārim), and thereby insures to the new possessor perpetual ownership.[205]

Two other Ḫana texts are purchases rather than gifts. One records the purchase of two portions of field,[206] the other a house.[207] They date from the reign of King Kaštiliašu, a contemporary of Šamšu-iluna, the son and successor of Hammurapi. Both sale documents stipulate that the properties will not be subject to the release. The text dealing with the house reads: bītum naṣbum ša la baqri ù la andurāri, agreeing exactly with the prohibitions occurring in the gift properties. In these purchase cases especially, but in the gift occurrences as well, it is evident that the Ḫana people were well acquainted with a release

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is transliterated and translated by Moses Schorr, Urkunden des altbabylonischen Zivil-und Prozessrechts (Leipzig: J. C. Hinrichs'sche Buchhandlung, 1913), p. 302, 3.

[204] Julius Lewy, op. cit., pp. 23-25.

[205] VS, VII (1909), no. 204, ll. 30-32. For the transliteration and translation, see Arthur Ungnad, "Urkunden aus Dilbat," Beiträge zur Assyriologie," VI (1909), heft 5, pp. 28-30.

[206] TCL, I (1910), no. 238.

[207] Theo Bauer, "Neues Material zur 'Amoriter'-Frage," Mitteilungen der altorientalischen Gesellschaft," IV (1928), pp. 2, 3.

(*andurārum*, Hebrew *d^{e}rôr*) which was used to prevent the permanent alienation of property. They betray this by the exceptions: the parties in the transactions cited above agreed that the law of release was to be inoperative.[208]

There seems to be a hint, as Lewy points out, why in the cases cited the properties were not to be subject to the *andurārum*. In the sales documents they both declared that the buyer had paid "its full price." Comparison with the Middle Assyrian legislation shows that the acquisition of absolute property depended on the payment of the full price; and the acceptance of it implied a willingness to part with the property once and for all. These contracts relating the payment of the full price appear to concern sellers resolved not to recover their property; they do not intend to benefit from some future release. Therefore, since the one clause says that the full price had been paid, a succeeding clause stipulates that the land is not subject to an *andurārum*.[209] Such exceptions to the release are not anticipated in the Leviticus legislation, since permanent alienation of the land is forbidden. With respect to the gifts, it is not surprising that a king should desire to give to a loyal servant property not subject to the release.

Other Old Babylonian texts also show an awareness of a release. One such document refers in this way to an *andurārum*: "(as for) the orchard, the acquisition of Bu[.........., which] for the second time was given to Apil-ilišu, the chief of the Amorites, and the house worth one mina of silv[er], the king est[ablished] the *andurāru* of the ho[use and the orchard] [and] made them return to us."[210] From all appearances, however, this decision of the king's was an individual case and not a general release. Such an individual decision is prescribed in the Code of Hammurapi, paragraph 17, concerning a defaulting debtor who has had to give himself or one of his family members into servitude; they shall serve for three years, but in the fourth year their freedom shall be established (*andurāršunu iššakkan*). While this has to do with slavery rather than property, it still has its point of comparison with the biblical jubilee, since there also the enslaved was to be liberated and returned to his released land (Lev. 25:41).

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[208] Julius Lewy, *loc. cit.*

[209] *Ibid.*, p. 26.

In addition to such special cases, however, there is evidence to show that ancient Mesopotamian rulers, some dating back to the second half of the third millennium,[211] established general releases by which the servitude of many free-born persons came to an end, contracts of debt were annulled, or even sale contracts set aside. Urukagina stated concerning himself that he "established the freedom" of the people of Lagash, which in its Sumerian terms is the equivalent of *andurārum šakānum*, to establish a release.[212] It is also documented that Ur-nammu, founder of the third dynasty of Ur, established justice in the land.[213] King Lipit-Ištar of Isin declared in his so-called law code that he had established justice in Sumer and Akkad, and had procured the freedom of those upon whom slaveship had been imposed.[214] A year-name for this king's reign is given as: "Year in which King Lipit-Ištar created a righteous order in Sumer and Akkad."[215]

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[210] *VS*, VII (1909), no. 156, p. 60. The translation with restorations are Julius Lewy's, *op*. *cit*., p. 27.

[211] Julius Lewy *op*. *cit*., p. 27, emphasizes the Amorite element in these cases. Finkelstein points out, however, that the release was an accepted procedure in Sumer by the middle of the 3rd millennium, B.C., so that the release may not be Amorite in origin. J. J. Finkelstein, "Ammiṣaduqa's Edict and the Babylonian 'Law Codes,'" *JCS*, XV (1961), p. 104, n. 19.

[212] *Ibid*., p. 104. Ernst F. Weidner, "Ilušumas Zug nach Babylonien," *ZA*, N.F. IX (1936), p. 120.

[213] Finkelstein, *op*. *cit*., p. 101, n. 15.

A king's declaration that he had established justice or procured freedom in his reign is not to be understood as a mere generalization to the effect that he had been a good king. These expressions refer to a specific act or acts of the king taken in consideration for the welfare of his people. The term for procurement of freedom (*andurārum* or its Sumerian equivalent, *ama*.*ar*.*gi*$_4$) is understood from what has preceded. The expression to establish justice or to create a righteous order (*mīšarum šakānum* or its Sumerian equivalent, *níg*.*si*.*sá gar*), is somewhat more general, but it none-the-less has specific acts in mind. It has been defined as a royal act aiming at the restoration of social equity whenever economic or other changes created a discrepancy between the social status established and protected by law and the needs, or claims, of certain groups of the population. Under such circumstances it was the duty of the king to establish a *mīšarum*, i.e., to readjust the law to the necessities of a changing world. In practice, the *mīšarum* refers usually to a remission of certain debts or to a moratorium.[216] The *mīšarum*-act then was not strictly a reform, since it did not intend to create a permanent change, but only to interrupt temporarily practices that were normally considered just and proper. The act consisted of measures designed to restore equilibrium to the economic life of the society, and therefore dealt mostly with the cancellation of specific kinds of debts and obligations.[217] There was, however, nothing to prevent the contracting of the same kinds of debts immediately after the *mīšarum* or *andurārum*, and texts will be cited below which show that such was the case.

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[214] S. N. Kramer, "Lipit-Ishtar Lawcode," *ANET*, p. 159.

[215] F. R. Kraus, *Ein Edikt des Königs Ammi-Ṣaduqa von Babylon. Studia et Documenta ad Iura Orientis Antiqui Pertinentia*, Vol. V (Leiden: E. J. Brill, 1958), p. 198.

[216] A. Leo Oppenheim, "Babylonian and Assyrian Historical Texts," *ANET*, p. 269.

The *mīšarum*-act must have had some real effect upon the economic life of the community at the time of its being decreed. This is evident by references to these acts in private documents, as well as by the fact that the act was acknowledged as among the important accomplishments of the king's reign and celebrated in the date-formulas.[218]

This act of creating a righteous order was not referred to in the documents only with the terms *mīšaram šakānum* or *andurārum šakānum*. Other terms which refer to the same thing are *ṣimdatam šakānum*, *warki* (*ištu*) *kunukkātim iḫpū*,[219] and many others. Kraus has listed as many as forty-eight characteristic Akkadian and Sumerian expressions which in one way or another refer to this Old Babylonian release, or righteous order.[220]

Those formulas in the documents that read "after the *mīšarum*-act," or "after he smashed the tablets," etc., show that the business transacted through those present documents were not to be effected by the *mīšarum*, because their agreements were settled later than it.

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[217] Finkelstein, *op. cit.*, pp. 100-102.

[218] *Ibid.*, p. 101.

[219] B. Landsberger, "Die Babylonischen Termini für Gesetz und Recht," *Symbolae ad Iura Orientis Antiqui Pertinentes Paulo Koschaker Dedicatae* (Leiden: E. J. Brill, 1939), p. 230.

[220] *Op. cit.*, pp. 235, 236.

Several kings of the first dynasty of Babylon are known from various sources to have decreed a *mīšarum*. Private documents in varying terms show that Sumu-la-ilum declared one.[221] In a tablet concerning a dispute over a date-palm orchard is the clause: *warki Sumu-la-ilum mīšaram iškunu*, "after Sumu-la-ilum established the *mīšarum*;" a similar clause appears on a contract of sale for a house; and in a document liberating a slave is written: *ištu Sumu-la-ilum kunukkāti iḫpū*, "after Sumu-la-ilum smashed the sealed documents." It is worthy of note that the release which a king might decree related not only to contracts of debt, but also to sales, and even to the surrender of children to adoption.[222]

King Sin-muballiṭ apparently effected a *mīšarum* also, but very little evidence for it is preserved. A loan contract contains the phrase *warki ṣimdatim*,[223] a variant for *warki mīšarim*.

Concerning the great Hammurapi, only one private document so far published indicates a *mīšarum*, yet his second year, the first full year of his reign, celebrated this important event by being called the year when "he established justice in the land."[224]

So too did Samsu-iluna's second year-name, called the year when "King Samsu-iluna, favored by the great gods, established the freedom of Sumer and Akkad."[225] The term freedom is a translation of *ama . ar. gi*$_4$, the Sumerian equivalent for *andurārum*. Doubtless the term as used here is meant to express the same thing as the *mīšarum* memorialized in

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[221] *Ibid.*, pp. 224, 225.

[222] So Landsberger, *op. cit.*, p. 231.

[223] Kraus, *op. cit.*, p. 225.

[224] *Ibid.* Oppenheim, *ANET*, p. 269.

[225] *Ibid.*, p. 227.

Hammurapi's second year-name. So while the mīšarum was the more general term, and andurārum the more specific word for release from debt or bondage or of real-estate, the two terms were often synonymous and practically interchangeable.[226]

As a supplement to the information afforded in this year-name, a letter sent by Samsu-iluna to a man at Larsa states how the general mīšarum applies to a certain segment of the population. He had declared invalid (literally, smashed) the debt tablets of the rēdī, the bā'irī and the muškēnī, and had established justice in the land (mīšaram ina mati aštakan). Nobody therefore should be permitted to encroach upon the house of any of these above mentioned classes of people.[227] This should be understood as a special application of a general release.

Year-names for three other kings of Babylon's first dynasty commemorate a release. King Abi-ešuḫ entitled one the "year in which . . . the humble prince, who hearkened to Šamaš, the debts of his land . . .;" Ammi-ditana named his twenty-first year that "in which . . . the lord, who became great, the favorite of Šamaš, released the debts with which his land was covered;" and Ammi-ṣaduqa evidently proclaimed two releases during his reign. The second year he called that "in which . . . the humble shepherd, who hearkened to Anu and Enlil, arose for his land like the sun and for all the people created a righteous order." For his tenth year he gave the name: "year in which . . . the true shepherd, the favorite of Šamaš and Marduk, released the debts of his land."[228]

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[226] Finkelstein, op. cit., p. 104, note 19.

[227] Kraus, op. cit., p. 226. Julius Lewy, op. cit., p. 28. Koschaker, "Randnotizen zu neueren keilschriftlichen Rechtsurkunden," ZA, N.F. IX (1936), pp. 219, 220.

[228] Kraus, op. cit., p. 229. For an example of how a mīšarum-act of this king was applied in an individual case, see Moses Schorr, Urkunden des altbabylonischen Zivil - und Prozessrechts, pp. 376-379.

The greatest contribution to the understanding of the *mīšarum* in Old Babylonia comes from a document which has been referred to in recent years as an edict of King Ammi-ṣaduqa.[229] The document is probably not the announcement of the *mīšarum* itself, but most likely was written some years later, since it seems to show a somewhat retrospective character.[230] The text of the document explains how the *mīšarum* was to be applied to various people in differing circumstances. The clause *aššum šarrum mīšaram ana matim iškunu* ("because the king has established a righteous order for the land") recurs six times in the edict, and means that the king had set aside such existing bad situations as resulted in the deprivation of certain individuals or groups. He created certain exemptions by declaring that the existing documents of such and such a type were annulled (smashed). Of course valid new obligations of the same kinds could be contracted immediately after the edict, and these would be binding; but a fresh start was provided for those oppressed through debts, coercive sales, or servitude, by declaring the old documents invalid.

Paragraph 1 of the edict seems to protect the property of certain ones in debt from being taken over by creditors. The preserved part of it says that since the king has created a righteous order for the land, the creditor shall not proceed against the debtor's house (with coercive measures).[231]

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[229] Kraus, *op. cit.* The text of this document has been in the possession of scholars for a long time, but imperfectly understood and dated with great divergence of opinion. See Moses Schorr, "Eine babylonische Seisachthie aus dem Anfang der Kassitenzeit," *Sitzungsberichte der Heidelberger Akademie der Wissenschaften*, no. 4, (1915). Contributions to a more accurate dating were made by Gadd, "Text of the 'Babylonian Seisachtheia,'" *Symbolae ad Iura Orientis Antiqui Pertinentes Paulo Koschaker Dedicatae*, (1939), p. 104, and by Landsberger, *op. cit.*, p. 229. Placing of the date to the reign of Ammi-ṣaduqa is done by Kraus, *op. cit.*, with much more adequate exposition of the contents, on the basis of a duplicate and more complete copy of the text. See also Finkelstein, *op. cit.*, p. 92.

[230] Finkelstein, *op. cit.*, p. 101.

The second paragraph is in favor of those who owe for loans of some type. "Whoever has loaned out barley or silver to an Akkadian or Amorite . . . for tribute or as . . . and has had a document drawn up, because the king has created a righteous order for the land (*aššum šarrum mīšaram ana matim iškunu*) his document is smashed (*tuppašu ḫepī*). He cannot on the ground of the document cause the barley or silver to be paid back."

Some parts of the edict spell out severe penalties (even death) against those who might seek to circumvent the release and proceed against the debtor. Other parts exclude some debtors from the release, such as paragraph 6, which says of one type, "his tablet is not smashed" (*tuppašu ul iḫḫeppi*).

The porter is singled out for help in paragraph 11, and his debts are absolved. Paragraph 13 remits the field taxes on certain products like grain, sesame, etc., for six different classes of people in the region of Babylon. Another customary tax remitted by the *mīšarum* is that which the ale-wife paid to the palace.

Of greater significance for purposes of comparison with the biblical customs is the content of paragraph 18. It declares that if a duty of debt has bound a free man from any one of seven specified cities, and he (in consequence of it) has given himself, his wife, or his children into bondage for silver or as a pledge, because the king has created for the land a righteous order, he is liberated (*uššur*), his freedom is reestablished (*andurāršu šakin*). It was remarked above that the *d^{e}rôr* in Israel involved the release of slaves from bondage and their restoration to their ancestral land.

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[231] Kraus, *op. cit.*, p. 27 ff. The following remarks descriptive of the contents of the edict are all from the same source.

The custom of the *mīšarum* had wide distribution in Mesopotamia in Old Babylonian times. From the city of Isin year-names tell us that at least five kings announced them.[232]

For some as yet undiscovered reason, the kings of Larsa did not name any years for the *mīšarum*-act, but it is known that the custom was observed there. King Rim-Sin effected actions referred to in the documents as the *ṣimdatum*, a synonym of *mīšarum*. The Larsa examples have to do with the annullment of contracts of land sales.[233]

At Eshnunna the custom is quite well attested. Two year-names commemorate such an event: (1) "The year in which King Abi-madar established the *mīšarum*, and (2) "The year when King Naram-Sin shattered the tablets of the country."[234] Furthermore, the private business documents have frequent reference to the event. A common expression is *warki mišar Dur-Rimuš iššaknu*, "after the *mīšarum* of Dur-Rimus was established."[235] One tablet mentions twice the absolving of debts. The tablet is dated "the year when Naram-Sin, the king, broke the tablets." But earlier in the text, and before the list of witnesses, is a more exact dating: "the month Kiṣkiṣu, after Naram-Sin, the king, broke the tablets." This appears to be an explanatory clause inserted to prevent the possible cancellation of the contract. The tablet was dated in the year in which the king ordered the cancellation of all contracts, but this one was written after the proclamation had been put into effect, and was therefore still valid.[236]

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[232] Kraus, *op. cit.*, pp. 200, 201.

[233] *Ibid.*, pp. 201-209, 215. Landsberger, *op. cit.*, p. 231.

[234] Kraus, *op. cit.*, pp. 230, 231.

[235] Lutz, *Legal and Economic Documents from Ashjaly*, texts 1:5; 9:10; 17:5; 18:13, 14; 34:5; 104:4, 5, and others.

Two of the Ḫana documents had date formulas referring to the release. The one referred to the year in which King Kaštiliašu established justice (*mīšaram*),[237] and the other to the year when Kaštiliašu established justice for the second time.[238]

Northward at the city of Ashur the release was observed. King *Īlušuma*, contemporary of Sumu-abum, declared of himself: *a-du-ra-ar a-ga-ti-i ù ma-ri-šu-nu aš-ku-un*, "the release of the Akkadian and their children I have established."[239]

This wide distribution of the *mīšarum*-custom indicates that it had strong and important effects upon the society of early second millennium Mesopotamia. When one considers the relation of this custom to the well-known law codes of this period and earlier, the impression of its influence upon society becomes even stronger. In a recent study the various early Mesopotamian law codes have been seen to be, at least in part, reflexes of royal *mīšarum*-acts. Various applications of the *mīšarum*-acts are thought to serve as the background for certain parts of the four codes now extant, namely, the Laws of Hammurapi, of Lipit-Ištar, of Eshnunna, and of Ur-Nammu.[240]

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[236] John B. Alexander, *Early Babylonian Letters and Economic Texts*, Vol. VII of *Babylonian Inscriptions in the Collection of James B. Nies* (New Haven: Yale University Press, 1943), text 75.

[237] *TCL*, I (1910), no. 238, ll. 55, 56.

[238] Bauer, *op. cit.*, p. 3, lines 44-46.

[239] Kraus, *op. cit.*, p. 233. Weidner, *loc. cit.*

[240] Finkelstein, *op. cit.*, pp. 97, 101 and note 15.

The above named codes are of a literary genre that is retrospective in character, looking back upon events that extend ultimately to a *mīšarum*. The evolution of the law code has been suggested along these lines: First there was the proclamation of the *mīšarum* itself. Somewhat later there was published, in some instances, an edict (such as the one by Ammi-Ṣaduqa) which not only referred to the *mīšarum* and its purely temporary conditions, but added also some quite general regulations intended to be more permanent and possessing *somewhat* of the nature of reform. Even the edict was to some degree retrospective, but the law codes stand at a further distance from the *mīšarum*-acts than the edict, both typologically and temporally. The Code of Eshnunna, however, does not appear to be as much removed from the *mīšarum*-act as the other codes mentioned. Even the "reform" text of Urukagina could be included as belonging to this line of development, since it is also retrospective, and we have the statement that he "established the freedom," *ama*.*gi$_4$e-gar* (= *andurārum* *šakānum*) of the people of Lagash.[241]

A Neo-Assyrian contract, though far removed in time from the Old Babylonian examples, has interesting points of comparison with the release as it was practiced in the biblical jubilee. The contract identifies a man named Ḫananu as the possessor of a landed estate which was to be "surrendered." After describing the estate, the contract says Silim-Aššur took the estate instead of, or, on account of, thirty-four shekels of silver. Silim-Aššur therefore was entitled to the usufruct of the land for an unspecified number of years; but he was obligated to accumulate a reserve of grain, and when the reserve would correspond to the value of thirty-four shekels, the estate was to revert to Ḫananu. A clause after the witnesses read, "if a release is established (*šumma*

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[241] *Ibid*., pp. 101-104.

duraru šakin), Silim-Aššur will claim his silver." This implies that if a general release were decreed, the creditor would retain his claim for payment, but could no longer exploit the land, and must allow it to revert to the owner.[242]

Such an arrangement as the above allowed the creditor to regain his investment from the usufruct of the land, just as in the biblical custom. But the biblical custom had this advantage: the time of the release was known in advance of the agreement, and the amount of money paid for the use of the land was adjusted accordingly. Therefore the creditor had time to recover his full investment from the land itself, and no provisional agreements were required to allow for an unexpected release.

When all of the features of the Mesopotamian release, which I have termed antecedents of the biblical jubilee and associated customs, have been compared with the Israelite institutions, the most distinctive element in the latter is the proclamation of the release at regularly fixed intervals. This regulation had the great advantage of removing the element of uncertainty and arbitrariness that existed when the release was proclaimed at the accession of a new king, or whenever the king thought it appropriate.[243] In Israel during the Tribal Confederacy, Yahweh was king. There could be no thought of a successor to him, and releases were prescribed at regular intervals.

These antecedents in various communities in Mesopotamia, therefore, were not exact parallels to the biblical institutions, but they do indicate that many of the ideas characterizing the jubilee and the seven-year release were widespread and had originated very early. They were expressive of viewpoints deeply rooted in the experience of Near Eastern societies long before Israel emerged into history.

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[242] C. H. W. Johns, *Assyrian Deeds and Documents* (Cambridge: Deighton Bell and Co., 1898), Vol. I, no. 629, p. 486. Cited by Lewy, *op. cit.*, p. 31.

[243] *Ibid.*, p. 29.

> The broad ideas of the Sabbatical year, Šᵉmiṭṭā and of Yōbēl were thus partly absorbed by the Hebrews from current Semitic practice, probably from Mittanian Harran, and partly sprung from the social and economic conditions of Israel. What, however, was absorbed was rearranged, reshaped and adjusted to fit into the pattern of Israel's conditions, its ethical conceptions and its general economic requirements.[244]

Date of the observance of the jubilee and related customs

A view popular some years ago, now rather out-dated, is that the jubilee was new legislation first introduced after the exile.[245] This viewpoint was developed in the days when the comparative materials from the cognate cultures of Mesopotamia were not available, or were accessible for the most part only to Assyriologists. Recent holders of a post-exilic date do not appear to have given sufficient weight to the above-mentioned comparative sources.

Another theory held that the jubilee year was never realized, but was an artificial, theological construction of exilic times.

> . . . . the conclusion may be reached that post-biblical sources and references and, what is more, lack of references, surely seem to reinforce the theory that the Jubilee laws as

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[244] Neufeld, "Socio-Economic Background of Yōbēl and Šᵉmiṭṭā," Revista degli Studi Orientali, XXXIII (1958), p. 57. The idea has been expressed that the jubilee was a dead letter, that the injunctions of the law never had any practical significance outside the writing desk of its author. So Aage Bentzen, Introduction to the Old Testament, 2nd ed., Vol. II, p. 70. It seems more likely that the writing desk productive of unreal situations is Bentzen's own.

[245] Wallis, God and the Social Process, pp. 287, 288.

> found in Leviticus are mainly the imaginary work of the exilic period.[246]

After having surveyed the material which I called Mesopotamian antecedents to the jubilee, we can see that the post-biblical references, or lack of them, are not so weighty for the answer to this problem as the pre-biblical ones. Moreover, it is difficult to see why the people of the exile should concern themselves with the problems of land-holding in Palestine when they were not in the land and most of them did not ever expect to go back. Of the various suggestions on the date of the origin of the jubilee, the exilic period is the least likely of all.

Yet another suggestion places the jubilee just before the exile but following the Josianic reform. The suggestion is made on the basis of a presumed characteristic feature of the Priestly Code which is said to have introduced into the ancient legal traditions an orientation of fraternal charity. The land laws of Lev. 25 are singled out as an example of the social and ethical striving of the priestly legal directives whereby the freedom and independence of the plain people were hedged about with effective protection.[247]

Why one should find the charitable and humanizing elements of the law in the seventh century instead of earlier is no longer evident. The now better-understood releases of Mesopotamia, the *mīšarum*-acts, obviously had human and charitable concerns of their own, and there is no reason to deny this to the early periods of Israel's history.

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[246] Eli Ginzberg, "Studies in Biblical Economics," *JQR*, XXII (1931-1932), pp. 368, 381. So also Max Weber, *Ancient Judaism*, trans. and ed. by Hans. H. Gerth and Don Martindale (Glencoe, Ill.: The Free Press, 1952), p. 71.

[247] Walter Eichrodt, "Religionsgeschichte Israels," *Historia Mundi*, ed. Fritz Kern and Fritz Valjavec (Bern: Franke, 1953), Vol. II, p. 430.

A very strong case can be made for placing the development of the jubilee early in the period of the monarchy. It can be argued that the release presupposes the accumulation of debts in a complex economy which was becoming disfunctional; that land transfers were common and therefore something to be regulated by law; and that these features were not characteristic of pre-monarchic times but were current after the reign of Solomon. Royal authority would be required to annul the effects of over-burdening debt and to restore opportunity to those unable to protect themselves. Just as in the analogous cases in Mesopotamia, it would take a king to organize a release. Accordingly, one of the reforming kings (such as Asa or Jehoshaphat) presented the jubilee as a sort of compromise measure; the concept of inalienability of land was retained, but a practical "sale" was made permissible.[248]

Perhaps support for the view can be seen in the suggestion that certain kings of Judah may indeed have decreed something similar to a *mīšarum*. Attention has been called to the fact that some kings are said to have done what was right (*yāšār*) in the eyes of Yahweh, and that sometimes this comment is associated with certain reforms carried out by the king. The words *yāšār* and *mīšarum* are etymologically related, and the possibility exists that some kings decreed releases.[249] Asa, Jehoshaphat, Azariah, and Hezekiah[250] are all kings whose right or justice is associated with reforms. The contexts of these references often indicate the ability of the king to uphold the law, note any major omission of his endorsement of the whole law, and observe when he has maintained or re-promulgated legislation effected by a predecessor.[251] The appeal to Rehoboam to alleviate the economic oppressions instituted by Solomon might be interpreted as an effort to obtain from the king an edict comparable to a *mīšarum*.[252]

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[248] Professor G. E. Mendenhall's view, not published.

[249] D. J. Wiseman, "The Laws of Hammurabi Again," *JSS*, VII (1962), pp. 167, 168.

[250] I Ki. 15:11, II Chron. 14:1, 2; I Ki. 22:43; II Ki. 15:3; II Ki. 18:3.

However, not all kings who are said to have done *yāšār* are said to have effected reforms,[253] and in the passages relating reforms which ascribe *yāšār* to the king, his accompanying acts appear to have more to do with religious rather than economic affairs. At least no special connection with economic matters is evident. Furthermore, if *yāšār* in some passages can be compared to a *mīšarum*, there is no suggestion that the king was instituting some new thing. On the contrary, certain texts would make the practice go back at least as far as David.[254]

The jubilee could well have been known in pre-monarchic Israel. The reversion of "sold" (leased) property to the original owners at periodic intervals harmonizes with concepts known to have been held in the period of the Judges such as God's ultimate ownership of the land, the holding of individual plots as a fief from Yahweh, and the consequent prohibition of permanent alienation. These viewpoints can all be understood as parts of one general pattern, each separate part having its parallels in second millennium Mesopotamia. We have seen that the jubilee itself has parallels or antecedents in second millennium Mesopotamia. It is generally true that Israelite institutions with Mesopotamian (and especially Amorite) connections and parallels are pre-monarchic. After the establishment of the monarchy there is more and more assimilation to local Canaanite traditions and consequently less similarity to Mesopotamian customs.

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[251] Wiseman, *JSS*, VII, p. 167.

[252] *Ibid*., p. 168, and citing I Ki. 12:1-15.

[253] Jehoash, II Ki. 12:2; Amaziah, II Ki. 14:3, II Chron. 25:2; Jotham, II Chron. 27:2.

[254] I Ki. 15:5, 11; II Ki. 18:3.

Even the fifty-year cycle of the jubilee, which has caused some scholars to date the jubilee quite late,[255] can now be offered as a testimony to its antiquity. It has been shown that the Old Assyrian calendar knew not only a pentecontad of days but also cycles of seven years and fifty years.[256] Thus the fifty-year cycle joins the other constituents of the general pattern mentioned above, all of them dating from second millennium Mesopotamia. Furthermore, the fifty-year cycle fits well into pre-monarchic but not into monarchic times. If a jubilee were to be observed during a king's reign, one would expect it to be tied to the king's accession, or to some outstanding event of the reign, or at least to the king's decision, but the fifty-year cycle takes it virtually out of the hands of a king. In this respect the jubilee was unlike the Mesopotamian releases; the fifty-year interval would imply that no other king was acknowledged in Israel except Yahweh.

The economy of the period of the Judges was complex enough[257] to allow for the observance of a jubilee in those times. All that would be required is a system of loans and mortgages, antichretic in nature, such as are documented for earlier times at Nuzi[258] and elsewhere. Early Israelites must have been familiar with oppressive debt, particularly if we allow that large numbers of them joined the community out of the background of Canaanite city-state society. The jubilee would have served for them as a brake against the development of what was common among the Canaanites, the permanent loss of small landholdings and their inclusion in big estates.

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[255] Eli Ginzberg, *op. cit.*, p. 389.

[256] Hildegard and Julius Lewy, "The Week and the Oldest West Asiatic Calendar," *HUCA*, XVII (1942-43), pp. 72, 96, 97, note 391.

[257] Some writers have sought to stress the suitability of the period of the Judges for the observance of the jubilee because of the simplicity of the economy at that time, rather than its complexity. So North, *op. cit.*, p. 204 f.; and August Dillmann, *Kurzgefasstes exegetisches Handbuch zum Alten Testament*, *Die Bücher Exodus und Leviticus* (Leipzig: S. Hirzel, 1880), p. 608. Compare also Albrecht Alt, "Die Ursprünge des israelitischen Rechts," *Kleine Schriften zur Geschichte des Volkes Israel* (München: C. H. Beck, 1953), Vol. I, p. 327, note 3. That an unusually simple economy was not required is shown from the fact that several features of the jubilee were contained in the Babylonian *mīšarum*, which was practiced in some highly urbanized communities.

Whether or not it can be maintained in the absence of any historical records that the jubilee was actually observed in the period of tribal confederacy, the existence of the law testifies to other features of Israel's pre-monarchic system of land tenure. For even if one accepts the view that the jubilee was introduced during the monarchy, it is necessary to conclude that it was presented to preserve the old concept of the inalienability of the land and its accompanying ideas, --ideas that were often in sharp conflict with the newer policies of the monarchy.

Incomplete Observance of the Traditions

The socio-economic institutions of the period of the Judges were designed to protect the individual Israelite proprietor from exploitation by his neighbors and the consequent development of large estates and the evils of latifundism. The laws anticipated that some farmers would lose out in the competition and become bankrupt, having to surrender the use of their land for a period of time, at least; but provision was made for their recovery through the customs discussed above.

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[258] See below, p. 151f.

While the laws just mentioned had some real force in the society, their ideals, of course, were never fully realized, and there is discernible already in the Judges period the beginnings of an aristocracy. Gideon displayed that he had accumulated enough wealth to be in a favored and superior position when he was able on short notice to select ten men from among his servants to accomplish a somewhat daring mission (Jud. 6:27). There were also some movable fortunes being amassed, as the eleven hundred pieces of silver belonging to the Ephraimite woman would attest (Jud. 17:1-3). With that kind of capital available, the temptation must have been present to invest some of it in acquiring land by purchase.

At the end of the Judges period one has the example of Kish, the father of Saul, Israel's first king. Kish is described as a man of wealth (gibbôr ḥayil) who possessed slaves (I Sam. 9:1-3).

Saul himself, who as the first king kept a relatively simple house by comparison with what was to come later under David and Solomon, nonetheless had considerable wealth. Some of it must have been his before he became king. I Sam. 11:5 shows him working his own fields following his oxen, although he probably had some slaves, as did his father. Later he was known to have a head-slave, or steward, named Ziba, under whom served twenty slaves (II Sam. 9:2; 19:17).

The prophet Samuel, whose life spanned the transition from Tribal Confederacy to Monarchy, gave in his farewell speech an indirect indication that he had known of fraudulent practices and illegal transfers of property that would have abetted the growth of larger estates. He protested that he had not defrauded nor oppressed anyone, and, if the Septuagint is to be followed at this point (and the evidence is strongly in its favor), he ended his protestation by asking: "from whose hand have I taken a bribe or a pair of shoes? Testify against me and I will return it unto you."[259] Why the pair of shoes mentioned in apposition to the bribe? Speiser has shown from Nuzi documents that a pair of shoes was sometimes given as a token payment to validate business transactions that otherwise would be illegal.[260]

In one of the texts cited, a father gives his daughter some real estate as a dowry, an act not sanctioned by law, since the only proper way to obtain real estate was by inheritance. The daughter reciprocated with some presents, one of which was a pair of shoes. In another text a father gives his daughter as a gift to another man, and the latter may arrange her marriage to someone else. (The gift had some relation to a pending lawsuit.) In return for the gift the father was given a cloak and a pair of shoes.[261] The shoes in these transactions are seen as legal symbols that lend to the acts the appearance of normal business practice. Both cases have elements that are outside the regular legal framework, and it is only the ceremonial transfer of the shoes that prevents the parties involved from being guilty of illegal acts.[262]

Samuel's protestation seems therefore to include a denial that he had taken any person's property, movable or immovable, through devious means, even though it might have the appearance of legality. His denial, however, shows that the fraudulent practice was known in Israel in his time, and common enough for the allusion to be readily understood. Some property was being lost to its hereditary owners and added to the estates of others.[263]

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[259] I Sam. 12:3. Compare the Septuagint with the Massoretic text. See E. A. Speiser, "Of Shoes and Shekels," *BASOR*, LXXVII (Feb., 1940), p. 16, 17. S. R. Driver, *Notes on the Hebrew Text and the Topography of the Books of Samuel* (Oxford: The Clarendon Press, 1913), p. 89. The Revised Standard Version cannot be right at this point, for עיני must either be read "my eyes" or else with emendation as the imperative "testify," but it cannot be for both.

[260] *BASOR*, LXXVII (Feb., 1940), p. 17.

[261] *Ibid*., with reference to *AASOR*, X, pp. 66 and 63, 64.

[262] *Ibid*.

Obviously the Israelites would not have abandoned their customs against permanent alienation of real property except under dire necessity. The necessity was doubtless created by debt which the farmer found himself unable to pay. Faced with such debt, he had recourse to mortgaging his property. Ideally, this latter should have involved at the worst no more than the sale of the usufruct of his property for forty-nine years, the property returning to him or his heir in the year of jubilee as the law required. But such a sale required that kind of a buyer, and because of the proximity of the Canaanites and their commercial system, potential buyers might well exert pressure for an outright sale.

The provisional sale allowed under the law of the jubilee has been defined above as an antichretic mortgage, the creditor taking over the use and produce of the land and obtaining thereby a return satisfying not only the interest on the loan but the principal as well during the forty-nine year period. There may have been also loans of shorter duration secured with pledges of property, in which case the use of the land satisfied the interest but did not retire the debt. No examples are available from the biblical text, but there are from the cognate cultures. It is reasonable to suppose that this type of loan occurred in Israel as well, not only because of its similarity to the "sale" allowed under the jubilee law, but also because an investor could make such a loan with profit while escaping the necessity of charging interest.

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[263] The permanent alienation of heritable family property may be illustrated to a limited degree from the _kudurru_ stones of the Kassite period in Babylonia; see above, p. 62. Some _kudurru_ stones register the permanent sale of property that had belonged to the clan or tribe, sometimes in response to pressure from the king or highly placed official. Full payment was given and the customary formulas of imprecation were directed against anyone who would try to restore the property to the district to which it had belonged. See L. W. King, _op. cit._, pp. xiv, 37-42; Cuq, _op. cit._, pp. 88, 91, 92. In Israel the transaction must have involved smaller groups, and resistance to alienation appears to have been left to the individual families that held proprietorship. The strength of their resistance depended on how they were faring in the economic competition.

From a Middle Assyrian text comes a clear example of this kind of loan. Two men received as a loan forty mina of lead for the duration of six years. They delivered as security nine *iku* of field distributed in various places along the river. Their creditor was to hold and regularly cultivate the fields to his own profit. The debtor was to pay no interest on the lead on the one hand, and the creditor was to give none of the proceeds of the fields, on the other. At the end of six years the lead was to be repaid, and the fields were to be returned to the owners.[264] With this kind of loan, in which the use of the fields served in the place of interest but repaid no part of the principal, the debtor could find himself in great difficulty. Deprived of the produce of his fields, how was he to repay the loan? It would be necessary to have income from some other source, or face the prospect of deeper involvement in debt. A similar case from the same source shows a person securing a loan not only with a field but also with service,[265] a procedure that appears even more risky.

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[264] Paul Koschaker, *NKRA*, pp. 160, 161.

[265] *Ibid.*, pp. 161, 162.

The same kind of loan existed at Nuzi and is known from the ditennūtu texts, transactions which may be called "mortgages with antichresis."[266] One such text, of special interest for our purposes, is, first of all, a "sale-adoption" tablet, a transaction explained earlier wherein the seller of a property evades the law against property sales by "adopting" the buyer, thereby making him his heir, and receiving from him in response a "gift." But in this case the property being sold had already been mortgaged, and was at the time in the possession of the creditor. The adoptee would have to pay off the mortgage before he could take possession of his inheritance.[267] One can imagine in this case that the seller stood in danger of losing the property which he had mortgaged, since he could not pay the debt. His resort to "sale-adoption" was an effort to salvage something from this property rather than lose it all to his creditor.

It was possible for the debtor in these ditennūtu agreements to get a renewal of his contract if he was not able to repay on time. In these extensions, the creditor advanced more capital to the debtor. It is probable that with the second advance of capital, the creditor had paid a combined sum more closely approximating the worth of the land, although still quite to the favor of the creditor. By means of the refinancing the mortgage was virtually converted into a sale, since the overburdened debtor was scarcely expected to be able to repay his loan.[268] A wily creditor could thereby practically enforce the sale of desirable property and thus build up his own estate. It is only speculation to suppose that this factor had a part in that transition in Israel to the permanent alienation of land, but the conditions were right for it, and further, the same regions which provide so many other parallels to Israelite institutions provide this pattern also.

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[266] E. A. Speiser, "New Kirkuk Documents Relating to Security Transactions," JAOS, LII (1932), p. 356f. Francis Rue Steele, op. cit., pp. 44-49. Pierre M. Purves, "Commentary on Nuzi Real Property in the Light of Recent Studies," JNES, IV (1945), p. 78f.

[267] Speiser, AASOR, X (1930), no. 14, pp. 43, 44.

[268] Speiser, JAOS, LII (1932), pp. 361, 362.

The loan with antichretic pledge was very much a part of the economic life of Alalakh, especially of the eighteenth century B.C. But there, with one possible exception, land was not offered as the security. The person of the debtor or member of his family secured the loan and his services took care of the interest.[269] Apparently the principal had to be repaid. The king himself, as well as other highly placed officials, took a leading part in these transactions. Some texts show the king paying off a debtor's obligations, thereby buying up the debtor's contract for himself. The debtor entered the king's service until the debt was paid.

There is no doubt but that this arrangement was practiced in Palestine, since Exod. 21:2-11 refers to the reduction of Hebrews to slavery, and such a misfortune occurred only as the result of his own or his relative's poverty.[270] The law required that he be set free after six years of service, showing that in those cases the labor satisfied the principal as well as the interest. The law which required his freedom may often have been disregarded, however.

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[269] Wiseman, Alalakh Tablets, nos. 18-28, 32, 36, 47, 49. E. A. Speiser, "The Alalakh Tablets," JAOS, LXXIV (1954), p. 22.

[270] The Hebrew of Exod. 21:2 may well be the equivalent of the Ḫabiru at Nuzi and elsewhere, and hence an outsider, a non-Israelite, as Professor Mendenhall maintains. If that be the case, the Covenant Code does not give recognition to loans in which Israelites were given in security. However, the Habiru were subject to the practice, and so also must have been many Israelites, even if the law did not regard their cases as normal. By King Saul's time many such debtors existed (I Sam. 22:2).

It is also likely that the law of the jubilee was often disregarded. The relatively long fifty-year interval of the jubilee would tend to facilitate the circumvention of the law. In many cases, those who provisionally "sold" their lands would not live long enough to see them returned under the provisions of the jubilee. To the impoverished farmer, therefore, the provisional sale often had the appearance of permanency. It would be up to his potential heirs to contend for the return of the property in the jubilee; a task for which the heir would find himself at a disadvantage against the more affluent creditor, and therefore frequently unable.

The evidence is scant, but it appears probable that toward the end of the Confederation period some property was being accumulated into larger estates. This scarcely anticipated, however, the rapid breakdown of the old institutions that occurred after the establishment of the Monarchy.

CHAPTER III

THE PERIOD OF MONARCHY

Political and Economic Reorientation

Tenure of land in the monarchical period was inescapably influenced and changed as the result of a sweeping reconstruction of the political and economic structure of the nation; for the establishment of the monarchy effected very profound changes in all of society and constituted a most drastic break with the traditions of the past,--a break, however, which was to be contested by some members of society until the end of national independence. The changes wrought, especially under David and Solomon, were truly revolutionary. "The monarchy, owing to its nature and to its effects, was the most radical revolution in ancient Israel."[1] The aims of the new order were to give to Israel an international status, the pursuit of which was to cause the assimilation of its governmental system, its economy and its cultural orientation to those of the contemporary neighbors, the Canaanites. There was a new emphasis on commerce and industry, with the consequent development of the city at the expense of the village; and also a de-emphasis of the old traditions and a strong effort to create a national consciousness.

Under the United Monarchy

The expansion of the monarchy by conquest under David, so that all of Palestine and parts of Transjordan were brought under one rule, meant that vast segments of alien population with alien cultures were suddenly annexed to the kingdom of Israel. It is probable that the new and alien population outnumbered the groups that earlier composed the kingdom. While as a result of the new conquests many of the alien peoples may have adopted Israelite institutions and religion, many did not, but retained to a large measure the former ways of life. The latter would be most true, undoubtedly, of the great Canaanite city-states which still remained in the land, and which had always maintained a higher material culture than that of Israel. The Israelites, on the other hand, abandoned on a large scale their own traditions.

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[1] Neufeld, "The Emergence of a Royal-Urban Society in Ancient Israel," HUCA, XXXI (1960), p. 37.

A number of David's policies, while not necessarily devised solely for the purpose, none-the-less must have had the effect of conciliating and wooing the Canaanite elements of the population. The choice of Jerusalem as the capital city, while excellent from the standpoint of its location, had also the advantage that its background was not Israelite but Canaanite, having been a walled city-state from very ancient times. If Canaanite elements from other parts of the realm did not view such a choice as partisan to their interests, it was neutral at the least, so far as any relation to earlier Israel was concerned.[2]

By quite a number of ways David indicated that the non-Israelite elements were to have a recognized place in the new kingdom. He married Jebusite wives who were to bear him sons (II Sam. 5:13); his royal house was constructed by men and of materials sent to him from the Canaanite king, Hiram of Tyre (II Sam. 5:11, 12); and his census evidently included an enumeration of his potential resources among the non-Israelites as well as the Israelites (II Sam. 24:6, 7). Indeed, the royal authority came to be upheld in the course of time by a professional force of foreign mercenaries, in addition to the Israelite soldiers. Having conquered the Philistines David recruited from among them a band of warriors known as the Cherethites and the Pelethites, and there was also a special contingent of six hundred men from Gath (II Sam. 8:18; 15:18; 20:7).[3]

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[2] Another act of David's which might have been viewed as conciliatory was his treatment of the Gibeonites. Saul had sought to exterminate them, but David permitted them to be revenged upon the house of Saul by delivering into their hands seven of Saul's descendants to be hanged (II Sam. 21).

In the light of the above it is not so strange that David bought the threshing floor of Araunah the Jebusite (II Sam. 18-24). There is no doubt but that he could have simply taken it for his purposes by expropriation had he so desired. Since he had just previously conquered the city he could have proclaimed the land his by right of conquest. But in addition to the religious motivation which was given to explain his deed, David seems to have indicated by the purchase that he was not continuing the older policy of confiscating the land of non-Israelites in conquered territory. In this respect he was departing from the practices current in the period of the Judges and was allowing the Canaanites to live peaceably and in many cases undisturbed upon their land. The purchase appears to be an acceptance of the Canaanite system of land tenure, at least for the portions of the kingdom not traditionally Israelite. In buying the land David acted like the proprietor-kings of Canaanite city-states whose activities in land purchases and sales will be noticed below.

The remarkable changes in the whole structure of society occurring with the firm establishment of the monarchy under David were carried much further in the course of the reign of his son Solomon. Already under David the standing army had become radically different from the folk militia of the Federation period, with commanders designated as śārîm by royal appointment, and maintaining a professional soldiery of military gradation in rank (II Sam. 23:8-39; 18:1-4).[4] Under Solomon there was the establishment and expansion of a strong chariot force, so that he now possessed the feature that had given the Canaanites military superiority in the days of the Judges. Solomon's chariot force was given such priority that it overshadowed completely the mercenary foot-soldiers, who were relegated to such a secondary position that they are given no mention in Scripture for Solomon's reign. According to I Kings 10:26 he had as many as 1,400 chariots, a quite feasible number, for in the succeeding century King Ahab put 2,000 into the battle at Qarqar, and the king of Damascus sent 1,200.[5] Solomon stationed his chariotry at the former Canaanite chariot towns of Jerusalem, Hazor, Megiddo, Gezer, Lower Beth-Horon, Baalath, and Tamar, for which he built extensively (I Kings 9:15-19). The development of a class of military noblemen (the charioteers) was bound to have a profound effect in hastening Israel's assimilation to Canaanite land tenure customs.

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[3] De Vaux, Ancient Israel, p. 219.

[4] G. E. Mendenhall, "The Census Lists of Numbers 1 and 26," JBL, LXXVII (1958), pp. 57, 58.

Above all, however, Solomon's administrative divisions of the kingdom show that the monarchy rested upon a political and economic base different from that of the Confederacy. The text of I Kings 4:7-19 lists the administrative divisions and their officers for Israel, the northern and larger part of the united kingdom. (Judah was not included in the list because as the other part of the dual monarchy it must have had a system of its own.) The divisions were made principally for the purpose of collecting the revenue, each district supplying the required amount for a month, but the officers doubtless functioned in a larger role as governors of their districts.

The territories included in the various divisions are the striking thing. A number of the divisions simply correspond to tribal names, such as Ephraim, Naphtali, Issachar, and Benjamin; others, however, combine various of the ancient city-states together. An example of this latter is the fifth division, which combines Taanach, Megiddo and Beth-shean, all of them powerful city-states that had repelled Israelite conquest in the days of the Judges and only succumbed to Israelite rule under David. The list of administrative districts therefore shows Solomon in the process of basing the economic and administrative organization of the kingdom upon the two elements, the old tribal districts and the newly incorporated Canaanite city-states.[6] The large place afforded the Canaanite element in the administrative reorganization must have prompted wider recognition of the Canaanite tradition of land tenure.

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[5] De Vaux, Ancient Israel, pp. 222, 223.

Solomon's building activities provided palaces and administrative buildings for the local governors in the various districts, and these quite naturally were situated in the cities, such as Megiddo, Hazor, Gezer, and the like. In these movements we see how definitely the political center of gravity had shifted to the formerly Canaanite walled cities. It is, of course, possible to over-emphasize the part given to the Canaanite element in the united monarchy under Solomon, but it is necessary to recognize that a certain dualism existed between the two factors, Israelite traditions on the one hand and Canaanite on the other.

> Die Liste der salomonischen Gaue ist die letzte Urkunde, die den alten Dualismus zwischen Stämmen und Städten bezeugt. Es ist eine Aufgabe für sich, seine Geschichte zurückzuverfolgen von den Zeiten, da die Stämme und Städte in friedlichem Verein den königlichen Hofhalt Salomos bestreiten mussten, bis in jene dunklen Jahrhunderte, da sie den grossen Kampf um ihr Dasein miteinander zu führen begannen.[7]

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[6] The notion that Solomon was deliberately undermining the earlier tribal organizations in favor of the new order may not be correct. He faced the problem of integrating the Canaanite enclaves conquered by David with the old tribal territories. De Vaux, Ancient Israel, p. 135.

[7] Albrecht Alt, "Israels Gaue unter Salomo," Kleine Schriften zur Geschichte des Volkes Israel, II (1959), p. 89.

Solomon's activities as a trader doubtless had an effect upon the matter of land tenure also, since the accumulation of much more money in the land would be a stimulus to sales. Like other kings of the era he maintained a virtual monopoly on nearly all trade except for that which was strictly local.[8] Extensive trade passed between Solomon and Hiram of Tyre, Solomon paying for cypress and cedar wood with the produce of his country in grain and oil (I Kings 5:10, 11). The two of them, moreover, cooperated on the import of gold from South Arabia to the port city of Ezion-Geber (I Kings 9:26-28). Considerable wealth also came to Solomon as a result of trading in horses and chariots (I Kings 10:28-29). In addition to the profits from direct trade, the king levied a tax on all the merchant caravans that traversed the land. With his land resting across several of the important trade routes of the Ancient East, this income was considerable (I Kings 10:14, 15), and the total accumulation from all sources was great. Such wealth, coming first to the royal treasury and then (some of it at least) into the hands of the developing nobility, must have facilitated the acceleration of the land purchases after the manner of the Canaanite tradition.

Under the Divided Monarchy

One of the earliest significant moves of Omri was the purchase of the hill of Shomer as the site of his new capital city, Samaria (I Kings 16:24). The purchase shows that Omri was not identified with those forces in Israel that had reacted so strenuously to the influences of the new commercialism. To the contrary, the move west to Samaria was a move toward the Canaanites, not merely geographically, but culturally, and the purchase of property according to Canaanite custom becomes a fitting symbol of it. Samaria, indeed, became the gateway through which all manner of Canaanite influences passed into Israel. Religious influences are the best-known example, but there were others also. Omri's move to Samaria put the Northern Kingdom back into the current of international affairs, and oriented Israel toward the west, especially Phoenicia. The ivory plaques and other ivory art objects excavated at Samaria and on display at the Rockefeller Museum in Jerusalem, Jordan, exhibit the cultural influences upon Israel from Egypt and Assyria as transmitted through the Canaanites of Phoenicia.

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[8] De Vaux, Ancient Israel, p. 78.

The movement begun by Omri was intensified by King Ahab. Ahab's marriage to the Syrian princess Jezebel resulted in political and commercial ties with the Canaanites as well as religious assimilation to them. With the Aramaean kingdom at Damascus there was also a commercial agreement, so that Ahab was permitted to set up a trade center or bazaar in Damascus. This concession was extracted as a prize of war, just as earlier the Aramean king had been able to trade in Samaria (I Kings 20:34).

The influence of the Canaanite element in Israel during the reign of Ahab was so strong at times that the Canaanite traditions appear to eclipse the Israelite.[9] The trends set in motion by Omri and Ahab were briefly interrupted at times by reforms, but were never permanently arrested in the following reigns.

A natural result of the new orientation was rapid growth of the cities, which in turn contributed to the breakdown of Israel's rural customs, and hence, of that form of land tenure based on kinship and forbidding permanent alienation.[10]

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[9] Albrecht Alt, "Der Stadtstaat Samaria," Kleine Schriften, III (1959), pp. 258-302. Alt thought that in the reign of Ahab a complete dualism developed in Israel, with two capitals, Samaria and Jezreel. Samaria was believed to be a typical Canaanite city-state administered according to Canaanite tradition and law, whereas Jezreel, the other royal residence, was far more Israelite in its traditions. The thesis

To sum up, the Israelite Monarchy brought together two differing civilizations (The Israelite and the Canaanite) whose ideas on human relationships were often in conflict, an outstanding example of this conflict being on the subject of landed property. It was only quite natural, however, that the government of the nation would most often represent the interests of the group in a situation to influence it. Since a large and influential part of the population was already oriented toward the Canaanite city-state view on land holding, strong pressures existed in favor of that system. When the Israelite kings adopted the course of commercialism and urbanization, it was inevitable that the Canaanite system of permanent alienation of land should prevail at the expense of the old Israelite custom of tenure through kinship and inheritance.

Projection of Royalty into the Determination of Land Tenure

When at the close of the Confederation period the people clamored to Samuel for a king to rule over them, Samuel sought to dissuade them, warning them and showing them "the ways (*mišpāṭ*) of the king who should reign over them" (I.Sam. 8:4-17). A popular critical opinion has been

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was supported by appeal to the incident of Naboth's vineyard (I Ki. 21), and to the revolution led by Jehu (II Ki. 9-11). The theory seems to push the evidence too far. As G. E. Wright has said in "Samaria," *BA*, XXII (1959), no. 3, p. 69, note 2, the thesis is logical but it is constructed on too narrow a base.

[10] "....urbanization dissolves the strength of the kinship tie. It concomitantly steps up the need for centralized legal control by throwing together multitudes of persons whose local or tribal backgrounds are different and whose customs and their underlying postulates are frequently in conflict at many points. City life proliferates law." E. Adamson Hoebel, *The Law of Primitive Man* (1954), p. 329. Quoted by Neufeld, "...Royal Urban Society...," *HUCA*, XXXI (1960), p. 42.

that this passage was of late date, reflecting the actual experience under the monarchy but put into the mouth of Samuel by some rewriter of history who was a late opponent of the monarchy. It has recently been shown, however, through a comparison of the documents from Alalakh and Ugarit, that the Samuel description of the way of kingship is an authentic representation of the semi-feudal Canaanite kingship as it existed in the days of Samuel and before, and is an "eloquent appeal to the people by a contemporary of Saul not to impose upon themselves a Canaanite institution alien to their own way of life."[11]

As the same writer pointed out, Samuel's objection was on two grounds: (1) human kingship would be the rejection of the sole rule of God, and (2) the king would enslave the people by confiscation of their lands and giving them to his servants, impressing them into forced labor, imposing heavy taxes, inducting them into armed service, etc. Actually, these objections are the two sides of one coin. The king could only commit these offenses by assuming the prerogatives of God. This is especially true in the matter of confiscating land and granting the same as a fief. In the Confederation period the Israelite landholder conceived of the land as belonging to Yahweh, and himself as the feudatory of Yahweh (Lev. 25:23). For the king to confiscate and to grant lands was to arrogate to himself a function of God. To the subject of feudal grants we will return later, but beforehand it will be shown that the king was active in all manner of real-estate transfers.

The King as Third Party in Private Land Exchanges

It is possible that the king in Israel made of himself the same type of interested third party in real-estate transfers that one discovers in the Ugaritic documents. There is not preserved for us any of the multitude of documents recording land sales that occurred in Israel during the monarchy, but it may be speculated on the grounds that Israel's kings adopted other Canaanite procedures on land transfers.

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[11] I. Mendelsohn, "Samuel's Denunciation of Kingship in the Light of the Akkadian Documents from Ugarit," BASOR, no. 143 (October 1956), pp. 17-22.

The King of Ugarit concerned himself as a third party in contracts when it seems that he had no claim to the properties involved. The transactions of many of the private exchanges, at least, took place before the king, whose presence was enough to validate the contract without the function of other witnesses. In the sales documents there is almost a complete lack of witnesses, quite different from the practice normal in Mesopotamian communities. The king's own participation in the act made the matter official and final, so that there was no need for witnesses, proofs in courts, and so forth.[12] The king assumed the function fulfilled by the courts in other communities, and was concerned to influence and regulate the passing of property between private persons.[13] Some documents which are apparently private sales show nevertheless a payment to the king. This was probably a fee paid for his services in making the transaction official.

In legal contests over land the king took an active part also. In a suit which appears to be concerned with succession to a property the king served as the arbiter, although witnesses were employed, and decided in favor of the defendant, pronouncing him "cleared" (*uzakišu*). Another very similar case arose which was handled much the same way, but the king gave to the favored party a tablet confirming her claim.[14]

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[12] *PRU*, III, no. 15.136; 16.343; 15.70; 16.154; 16.246; 16.147; etc.

[13] Klima, *ArOr*, XXIV, p. 362.

Some of the transfers of property between private parties over which the king officiates are called in the documents "a gift of the king." A person has bought a property, or acquired one by exchange, or by inheritance, and the means of acquisition has been openly stated in the text; and yet later the property is said to be a gift of the king. For example: "in the first place Idaranu has sold it, and in the second place Niqmepa, . . . the king of Ugarit, has given it. . . ."[15] This text has to do with a sale pure and simple. Another document shows the king "giving" to a man and to his heirs the property which was already his own;[16] yet another shows the king "giving" to a man a property which he has inherited from his father.[17] The "donation" in these cases turns out to be a legal fiction which has for its end the guarantee of the possession of the property, however acquired, and the protection of it from a successful claim by some other party.[18] In this role, however, the king is again displaying himself as interested and active in the determination of private property. There is implicit in his action, moreover, a doctrine of royal ownership, so that he validates the rights of the property holder.

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[14] *PRU*, III, no. 16.205; 16.245. A third text showing the king as arbiter in such disputes is broken in such a way as to prevent an understanding of the details (16.254c).

[15] *Ibid*., no. 15.119.

[16] *Ibid*., no. 15.88.

[17] *Ibid*., no. 16.249. See also nos. 16.174, 15.85, 16.277.

[18] Boyer, "Sur quelques emplois de la fiction . . . ," *RIDA*, 3rd series, I, pp. 84-86.

The King as Confiscator of Property

No clear distinction was made between what was the king's personal possession and what belonged to the crown. Everything therefore passed to the king's successor, whether or not he was of the same family. In this way David took over Saul's estate as well as his harem (II Sam. 12:8).[19] Having appropriated Saul's property, David felt free to dispose of it as it pleased him. Because of his earlier friendship with Jonathan he restored to Mephibosheth his inheritance out of Saul's property, but this was returned as a matter of the king's grace, and not as of right. Even then the king reserved the rights over the property and controlled its administration (II Sam. 9:7-10). Later on, when Mephibosheth was slanderously charged with treason, David withdrew the land and gave it to Ziba (II Sam. 16:1-4). When Mephibosheth had opportunity to deny the charge, David arbitrarily decided to divide the land between Mephibosheth and Ziba (II Sam. 19:24-30).[20]

The king not only appropriated the lands of his predecessor or of his political enemies; it appears that he also took possession of property left vacant when the owner left the country. This is evidently the explanation of the case of the Shunamite woman (mentioned in II Kings 8:1-6),[21] who had left her home and sojourned in the land of the Philistines for seven years. Upon her return it was necessary to appeal to the king for the restoration of her house and land. A favorable coincidence resulted in the land being restored to her.

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[19] De Vaux, Ancient Israel, p. 124.

[20] Ibid. K. H. Henry, "Land Tenure in the Old Testament," PEQ (Jan.-Apr., 1954), pp. 5-15.

[21] De Vaux, Ancient Israel, loc. cit.

A criminal guilty of treason or blasphemy was also subject to having his land and other properties confiscated by the king. It was on this ground that Jezebel contrived to take Naboth's vineyard from him when King Ahab could not persuade him to sell it (I Kings 21:7-16). She corrupted the council of the elders in Jezreel (Naboth's city), so that they created a situation in which Naboth could be charged with a crime. Two men were induced to testify falsely that Naboth had cursed God and the king. As a blasphemer Naboth was stoned to death, and his property was confiscated by Ahab. By this means the confiscation was given a cloak of legality.

Confiscation by the king of a criminal's property was the common practice in neighboring city-states. From Ugarit there exist examples.[22] King Niqmadu seized the property of a person who had become his enemy (nakir) and had evidently taken a town which the king claimed. The king bestowed the confiscated property upon another man who had slain the traitor and restored the misappropriated town. The new possessor was to enjoy the property tax free.[23] In a second case a king confiscated the threshingfloor of a criminal (bēl arni), but the property was given to some favorite of the king, who thereafter disposed of it for a price.[24]

The Alalakh tablets also furnish a case in point. A man became an offender, died for his crime, and his property was entered into the palace (i.e., was confiscated). However, the property contained the bride-price which the condemned man had received in payment for his daughter. King Niqmepa refunded this payment to the original owner.[25]

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[22] Speiser, "Akkadian Documents from Ras Shamra," JAOS, LXXV (1955), pp. 160, 161.

[23] PRU, III, no. 16.269, pp. 68, 69.

[24] Ibid., no. 16.145, p. 169.

The above-cited examples from Canaanite cities show that in confiscating property from criminals the Israelite king was only assuming the powers exercised by the kings of neighboring cities or states. On another plane, but relevant to the powers of confiscation, the prophets insisted that Yahweh had not abdicated his kingship, despite the monarchy, and that because Israel had sinned so grievously against him (had become a criminal), Yahweh would confiscate the land and put it into the hands of another people.[26]

The King as Possessor of a Large Estate

By one means and another the kings of Israel became the holders of large landed estates. Some land was doubtless appropriated by David as by right of conquest; other land was purchased; and more was confiscated from political or personal enemies. Probably David took the whole estate of Nabal when he died, in addition to taking Abigail as his wife (I Sam. 25). It has already been noticed that he claimed the estate of Saul. There is no detailed source of information on the extent of David's property, but some conception of its size may be gained from I Chron. 27:25-31, where the various stewards are named who had charge of different parts of the king's estate. There were stewards over various treasuries where wealth was stored in money or in goods; others over agricultural fields, vineyards, orchards, and other lands; and yet others over the cattle, the camels, the asses, and the flocks. All of this he had in addition to whatever came to him as tribute, gifts, taxes, and so forth.[27]

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[25] Wiseman, Alalakh Tablets, no. 17, p. 40, with changes in Wiseman's interpretation.

[26] Amos 7:17, Jer. 8:10.

Sometimes gifts even added to the landed property of the royal estate. A wife of Solomon received the city of Gezer as a wedding gift from her father, the king of Egypt (I Kings 9:16). This city was thereafter evidently regarded as crown property, which explains why its territory is not listed in the administrative organization of the revenues in I Kings 4:8-19, although it might have been expected in v. 9.[28] Such a gift by a king to his daughter and son-in-law is not altogether without precedent. King Niqmadu of Ugarit bestowed upon his daughter and son-in-law the town of Aḫnabbu and its various revenues, making it free of all taxes and contributions to the crown.[29] One may reasonably suppose that Solomon added largely to the landed estate he received from David his father out of the great income that was his from commercial enterprises (I Kings 9:26-28; 10:14 f.).

Of certain kings of northern Israel whose estates may be presumed to have been considerable, such as Ahab or Jeroboam II, there is no direct information; except that the prophets' denunciation of the aristocracy is doubtless applicable also to the kings (see below). Notice is taken of two kings of the southern kingdom whose activities included expansion of the royal domain. Uzziah as a lover of the soil had farmers and vine dressers in the hills and fertile lands; but also had large herds in the *š^{e}pēlāh* and in the plain for which he had hewed out many cisterns (II Chron. 26:10). Hezekiah also amassed riches worthy of special recognition. He not only built treasuries for the storage of his vast moveable wealth in precious stones and metals, but storehouses for the yield of his land and stalls for his cattle and sheep. He also provided cities for himself, a detail which will become more significant in the light of what follows.

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[27] De Vaux, *Ancient Israel*, pp. 139, 140.

[28] *Ibid.*, p. 125.

[29] *PRU*, III, no. 16.275, p. 69, 70.

The King as Trader in Real Estate

An event in the reign of Solomon shows that he traded in real estate very much like other kings of Palestine-Syria in the pursuit of his various programs. In exchange for the cedar and cypress timber and gold with which to build the temple and the royal palace, Solomon sold to Hiram king of Tyre twenty cities in the land of Galilee. Hiram was not too well pleased with the exchange after inspecting the cities, but evidently accepted the payment (I. Kings 9:10-14).

The sale of whole cities was not a unique thing. The Canaanite merchant-princes traded in cities, exchanging with one another, or buying from private parties. One of the earliest known historical facts about the city of Alalakh is that it was deeded to the king of the Amorite state of Yamhad in exchange for a city on the east side of the Euphrates.[30] The tablets from this city show that exchanges of villages were rather common. Ammitaku, the governor or king of Alalakh, sometimes traded village for village, or three villages for one, or assigned a village in exchange for payment or services not specified.[31] The Alalakh kings also bought villages outright from other parties, presumably private members of the landed aristocracy. Both Yarimlim and Ammitaku made such purchases, and on two occasions the city's "chief merchant" bought on behalf of the king. There appears to be one example of a private party buying a village from another private party.[32]

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[30] Wiseman, Alalakh Tablets, no. 1, pp. 25 and 2.

[31] *Ibid.*, nos. 78, 79, 80, 86, and see above, pp. 16, 17.

In a less direct way, the kings of Alalakh gained control of their subjects' land by making antichretic loans to them. Money was loaned without interest, the debtor or members of his family entering into the service of the king in order to pay off the loan. Sometimes the king bought up such loans held by other creditors.[33] It was discussed in Chapter II[34] how this type of loan frequently resulted in the land of the debtor passing to the creditor. Thus it was that in a great many cases the relation of king and subject was at the same time that of landlord and tenant.

The kings of Ugarit also engaged in buying and selling land. They not only assigned fief land for monetary returns--a practice to be noticed later--but they permanently alienated land by direct sales, much as a private citizen would do. It is not always easy to distinguish a sale of this kind from a transfer of fief land, but some cases seem to be clear-cut. On some occasions the sum paid by an individual for the land received from the king is characterized by the phrase *šimti-šu gamirti*, *ina šimti gamirti*, *šimta eqli*, or the like.[35] Since these same terms are employed in private sales (that is, between private parties), the assumption is that when they are used in transactions between a private person and the king, an outright sale is indicated.[36]

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[32] *Ibid*., nos. 52-58.

[33] *Ibid*., nos. 18-32, 41, 49. For a summary of the commercial activities of the Alalakh kings, see Mendelsohn, *BASOR*, no. 143, p. 19, note 9.

[34] Above, pp. 149-152.

[35] *PRU*, III, nos. 15.109; 16.174; 16.285; 16.135.

[36] Mendelsohn, *BASOR*, no. 143, p. 19, note 9.

The King as Feudal Lord

Only a few direct notices exist which show the king as a dispenser of fief land, and these have been declared capable of another interpretation, so that the lands given are regarded as direct gifts and not fiefs, since there is no mention of any service attached to them.[37] While the services are not specifically mentioned, it is difficult to suppose that kings such as David and Solomon would reduce their own advantages by making outright gifts rather than granting fiefs. David himself served as a feudal vassal to the Philistines before he became king in Judah and Israel, and in reward for his military services he was assigned the town of Ziklag as his fief (I Sam. 27:5-28:2). It would be only natural to reward his trusted subordinates with grants of the same kind.

The remark of King Saul in upbraiding his fellow Benjaminites lends itself naturally to the same conclusion. In complaining about the lack of intelligence that had come to him concerning David, he asked:

> Hear now, you Benjaminites; will the son of Jesse give every one of you fields and vineyards, will he make you all commanders of thousands and commanders of hundreds, that all of you have conspired against me? (I Sam. 22:7, 8).

Saul clearly implied that his followers were expecting an overthrow of the government, with David becoming the new king, and that when this took place David would have at his disposal fief land to grant to his supporters. The linking together of land-grants with military offices surely suggests that services were attached to the grants.

Does Saul's above-mentioned remark suggest anything about his own procedure? It has been asserted that Saul's angry statement could not possibly refer to a practice of his own in appointing his followers to high military rank and granting them crown lands, but that Saul drew this picture from the contemporary semi-feudal Canaanite society.[38] This may be so, but there is nothing to show that Saul had not already adopted the practice, at least in a limited measure. In that case, his words in the verse cited would infer that his own servants would lose their favored positions should David win out, since the latter would most likely replace them with his own nominees.

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[37] De Vaux, Ancient Israel, p. 164.

Whether Saul did or did not refer in any way to his own practice, it is clear that he understood the direction of these things for the future. Samuel had already shown clear insight on this matter when he objected to the establishment of kingship and predicted of the king: "he will take the best of your fields and vineyards and olive orchards and give them to his servants" (I Sam. 8:14).

The cases of David actually bestowing fiefs are practically nonexistent, even though we infer that the aristocracy developing during his reign must have acquired land in this way. David's manner of handling the confiscated land of Saul in granting some first to Mephibosheth (II Sam. 9), then replacing him with Ziba as the holder (II Sam. 16:1-4), and finally dividing the same land between the two (II Sam. 19:24-30), shows that a condition for maintaining possession was continued loyalty to the king. The grants were not outright gifts.

Another benefit which the king could bestow on a landholder, short of granting him crown land, was to declare his property, however acquired, to be free from taxation, or the proprietor free from forced labor. This is evidently the meaning of I Sam. 17:25, where it is said that the successful warrior against the Philistine champion would have his father's house (his inherited estate) declared by the king to be free (*ḥopšî*). This word generally refers to the social class of free-born persons primarily engaged in agricultural work as day-laborers, share-croppers or tenant farmers.[39] Manumitted slaves entered this social class as legally free but without land or other means of existence. Their only recourse in an agricultural society was to hire out as day laborers, or to settle on the estate of a large land-holder as a tenant-farmer. But I Sam. 17:25 must be an exception to this general usage, since it cannot be made to fit the context. The promise extended in that passage was to be free from taxation or from corvée duty.[40].

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[38] Mendelsohn, BASOR, no. 143, p. 22, n. 38.

Similar exemptions were made to their subjects by the kings of Ugarit. King Ammistamru declared pure or free (*zakū*) a man who was not required to send to the palace anything out of his grain, alcoholic beverage, or oil. King Niqmepa stipulated ten shekels of silver annually from Aziru for his position and his lands, but at the same time made him exempt (*zakū*) from the hands of the mayor or the chariot foreman. On another occasion Ammistamru declared a village free of the obligation to contribute their oxen, their donkeys or their men to the works of the king.[41]

As was shown in Chapter II, fief land was distributed by the kings of Babylon and Mari as a reward for military service especially, although other services were also rewarded in that manner. The Canaanite city-states of Syria likewise granted fiefs for military service, and it is their practices in this regard which suggest the closer comparison with those of Israel under the Monarchy, as might be expected.

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[39] I. Mendelsohn, "The Canaanite Term for 'Free Proletarian'," *BASOR*, no. 83, (Oct., 1941), pp. 36-39.

[40] *Ibid*., note 23. De Vaux, *Ancient Israel*, p. 220.

[41] *PRU*, III, no. 16.238, p. 107; no. 16.157, p. 84; no. 15.114, p. 112, 113.

The Canaanite city-states each had an armed force of conscripted foot soldiers and professional warriors. The foot soldiers were recruited from the common people, but the professional soldiers were taken from the ranks of the aristocracy and were designated by the term *maryannu*. These were especially associated with the horse-drawn chariot and were a highly privileged class. Their social status was hereditary, and only the king could elevate a commoner to be a *maryannu*. Members of the *maryannu*-class received crown lands in reward for their services to the king, and the income derived from them sustained them and their expensive war equipment.[42]

An Alalakh tablet[43] shows King Niqmepa bestowing *maryannu*-ship on a common citizen. The subject acquires a different religious status and assumes some special privileges that are not spelled out in the tablet. His new status may be similar to the one in Israel whose hereditary estate was to be made *ḥopšî* in reward for heroism, since the subject was to be "freed" in order to be a *maryannu*. *Ḥopšî* commonly is translated "free" in the Old Testament, and compares with the Akkadian word "to free" (wašāru) used in this Alalakh tablet. The Amarna letters are replete with uses of this verb which definitely imply an official appointment to some particular status.[44]

The Ugaritic king, Arḫalbu, favored Abdu and raised him to the status of a *maryannu*, putting into his hands at the same time several specified properties. From certain normal duties he is exempt, but he must pay the regular amount to the king which those of his station are assessed.[45] King Ammistamru appointed a man and his sons to maryannu status, and likewise delivered various properties to them. They enjoyed the same exemptions as the above-mentioned Abdu, but were also free from any assessment.[46]

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[42] Mendelsohn, *BASOR*, no. 143, p. 18.

[43] Wiseman, *Alalakh Tablets*, no. 15, p. 39.

[44] *JBL*, Mendenhall, LXXVII (1958), p. 59, note 35.

As noted above, the Israelite army of the Monarchy developed into something quite different from that of the tribal confederation, and under Solomon the chariot force became the most significant part of the armed forces.[47] It seems almost certain that Israel's new army was modelled after the pattern of the Canaanite states, especially with respect to the chariotry. After all, it was through the Canaanites that they were introduced to this military equipment, and most likely they learned to finance and sustain the chariotry by the Canaanite method,--namely, by granting fiefs to the charioteers. No aristocratic class directly equivalent to the maryannu-class is mentioned in the Old Testament, but a force of fourteen hundred chariots (I Kings 10:26) made their existence a necessity. Furthermore, Samuel foresaw that such a development was inevitable (I Sam. 8:11, 12).

The Kings of Ugarit gave fiefs to many others besides those designated as belonging to the maryannu-class. Sometimes the donations are made to high public officials, but oftentimes the document does not indicate the position of the recipient. It is evident that some received lands because of the office they filled and the service they rendered, such as the steward or the administrator,[48] but others are only identified by personal name,[49] and one gives only the name plus the appellative "the Egyptian."[50]

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[45] PRU, III, no. 16.239, pp. 79, 80.

[46] PRU, III, no. 16.132, pp. 140, 141.

[47] P. 156f.

The lands that are given are generally taken out of the hands of one holder and granted to the newly favored one, with the previous holder seemingly having nothing to say about the matter. These acts probably do not represent confiscations from the first party, who we may presume was not the actual owner, but only the temporary beneficiary under a mandate from the king who had the ultimate right to dispose of the property.[51] The wording of certain texts helps to clarify this, especially those which state that the gift is a royal grant (*nidnu šarri*).[52] The recipients in these two cases cited are identified as crown servants (*ardišu* and *rabiṣišu*). Nothing is said about any duties attached to these lands. Another text states that the King has taken the house of one administrator and the fields, house, olive orchard, and vineyard of another administrator, and some fields of the king, and has given them to another party. All these properties seem to be collectively referred to as "these gifts of the king" (*nidnūti šarri annūti*).[53]

Most of the cases where property is taken from one party and given to another are not explained. However, in a number of cases the first party is characterized as a defaulter (*nayalu*); that is to say, one who is incapable of exercising the rights or executing the services resulting from his position. This failure would justify the action of the king;[54] since the first feudatory did not meet the obligations attached to the land, he was simply replaced by another.[55]

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[48] *PRU*, III, no. 16.190, p. 64; no. 16.178, p. 148.

[49] *Ibid.*, no. 16.150, p. 47; no. 15.91, p. 75; no. 16.182, p. 148; etc.

[50] *Ibid.*, no. 16.136, p. 142.

[51] Speiser, "Akkadian Documents from Ras Shamra," p. 159.

[52] *PRU*, III, no. 16.247, p. 65; no. 16.190, p. 64.

[53] *Ibid.*, no. 16.201, pp. 151, 152.

Some of the lands that the king bestows are declared to have no services attached to them. King Ammistamru gave to Enkilu the house and lands of two other people. These properties are said not to have any _pilku_ (service).[56] Since no mention is made of clearing the obligation, this is probably not a new exemption, but the situation as it existed under the former holder. The same exemption is declared for a number of these grants.[57] Of course these exemptions are the exceptions that prove the rule; when no exclusion is mentioned it is assumed that the new property holder will take up the proper services assigned to his land. On occasion the _pilku_ is referred to,[58] and sometimes is specified.[59]

There was another type of royal grant at Ugarit for which the recipient paid to the king a cash sum. The payment inclines one toward regarding them simply as sales, but they were not that. Like the donations discussed above, the properties were taken from a first party and given to another, and the cash sum paid was generally a round number that was lower than the average outright sale. Probably the money represented a tax or a claim collected by the palace for privileges which the new holder would enjoy as a result of being regarded as a beneficiary of the king.[60] In one such transaction, King Niqmadu gave the property formerly held by one man to another and his sons, and the new holder responded by giving to the king two hundred shekels of silver. That the king still had a claim on the land is shown by the fact that the new holder became answerable for the services attached to the property.[61] A similar grant specified the pilku of the administrators, and another one changed the pilku from one type of official or functionary (āširu) to that of another (mūdū).[62] Some grants require an annual payment,[63] while others evidently call for one lump sum.[64] A few declare the grant to be forever (ana dārīti, ana dārī dūri),[65] or for the duration of the grantee's life.[66] Three of these transactions euphemistically refer to the payment as an honorarium (kubudati, or the verb uktabbid),[67] one of which required no pilku. In spite of the sizeable payments that were made, and the fact that the transactions were obviously arranged for the king's financial advantage, they were technically grants, and were sometimes so specified with the term nidnu.[68]

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[54] _Ibid._, p. 29. Observe Nougayrol's caution against assigning every property of a _nayalu_ as crown land, note 5.

[55] _Ibid._, no. 16.248, p. 48; no. 15.145, p. 123; no. 15.89, p. 53; 16.141, p. 60; no. 16.262, p. 67; no. 15.122, p. 131; no. 15.141, p. 136.

[56] _Ibid._, no. 16.134, p. 141, 142.

[57] _Ibid._, no. 16.201, p. 151, 152; no. 15.132, p. 133; no. 16.243, p. 155; no. 15.143, p. 117; no. 15.155, p. 118; no. 15.140, p. 135. _Ilku_ and _pilku_ are practically synonymous. _Ibid._, p. 226.

[58] _Ibid._, no. 16.262, p. 67.

[59] _Ibid._, no. 16.142, p. 77; 16.204, p. 120; no. 16.162, p. 126; no. 16.138, p. 145.

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[60] Boyer, PRU, III, p. 286.

[61] PRU, III, no. 16.167, p. 63. The term unušu is synonymous with pilku, p. 227.

[62] Ibid., no. 15.122, p. 132; no. 15.137, p. 134.

[63] Ibid., no. 16.254 D, p. 79; no. 15.137, p. 135.

[64] Ibid., no. 15.126, p. 112; no. 15.118, p. 131; no. 16.184, p. 149.

[65] Ibid., no. 16.283, p. 74; no. 15.137, p. 134; no. 16.282, p. 160; no. 16.256, p. 159.

[66] Ibid., no. 16.189, p. 92; no. 15.122, p. 132.

[67] Ibid., no. 16.260, p. 99; no. 16.256, p. 159; no. 16.251, p. 109.

The services (ilku or pilku) which were owed the crown in Ugarit were attached to the land rather than to the person--a situation quite different from that of Babylonia under Hammurapi, or in Nuzi, where the ilku was related to the feudatory person and which was one of the reasons why a man was forbidden to sell his fief land.

The feudal holdings at Ugarit were of such a type that they could be alienated. Since the feudal duties were attached to the property independent of the person of the holder, the properties could be sold or exchanged, the duties being assumed by the new tenant.[69] A person could, however, sell his fief with the understanding that he would continue to satisfy the services associated with it, in order to get a higher price or a quick sale. A text recording such an arrangement declares that the seller will assume any of all three services that might be associated with the property (ilku, pilku, unušu).[70]

The ability to alienate feudal property resulted in the loss of the personal character of feudal service. It was possible for a person to hold a number of fiefs, for which he could not simultaneously assure the services. The free exchange of fiefs also allowed some of them to fall into the hands of people incompetent to render personal service to the crown. An alienable fief, therefore, provided the king of Ugarit with a financial or economic advantage but reduced the degree of personal service involved.[71]

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[68] Ibid., no. 16.282, p. 161; no. 16.286, p. 162.

[69] Boyer, PRU, III, p. 294.

[70] Ibid., and see text no. 16.156, p. 61.

Since the services attached to fief land now had an economic value more than a personal one, the services themselves became susceptible to private appropriation, and were able to be granted in the place of or along with a fief of land. Thus the king is known to have given along with an agricultural domain the right to collect and retain what was due to the royal treasury from the neighboring tenants.[72]

One can readily see, therefore, considerable differences between the "feudalism" known in Mesopotamia, in such places as at Nuzi or at Larsa under Hammurapi, and the "feudalism" known at Ugarit or at Alalakh. The obligation of military or other personal service was fundamental in Mesopotamia, whereas in Syria the obligation was becoming more and more financial, resembling taxation. Many properties in Ugarit had lost their character as fiefs, so that one commonly meets in the documents of exchange the declaration that the property involved required no service. The "feudalism" at Nuzi or at Larsa offers some points of comparison with the land tenure of Israel in the days of the judges, when Israelites held land as by fief from Yahweh. The "semi-feudalism" of Ugarit and Alalakh offers more parallels to the land tenure of Israel under the monarchy, when the human king had become the feudal lord, and when there was ever-increasing influence from the commerce of the Canaanites.

Growth of the Landed Aristocracy

It was shown above[73] that the landed proprietors who were displaced by the Israelites had been referred to as lords (*baʿalîm*), and that these were sometimes contrasted to the Israelites, who were referred to as the men (*'ᵃnāšîm*) or the people (*ʿām*) of Israel.

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[71] *Ibid.*, p. 294, 295.

[72] *Ibid.*, p. 295. See no. 16.276, p. 69; no. 16.244, p. 93.

[73] P. 53f.

Later on, some Israelite citizens, apparently those who had acquired wealth and influence, were called *baʿalim*. It was the *baʿalê* of Gibeah who provoked the civil war recorded in Jud. 20. David sought to learn if the *baʿalê* of Keilah would deliver him and his men (*'ᵃnāšîm*) into the hand of Saul. There is a contrast here between the landed proprietors of Keilah and the indigent followers of David (I Sam. 23:11, 12; cf. 22:2). The *baʿalê* of Jabesh-gilead were those who stole the bones of Saul and Jonathan from their public exposure at Beth-shan (II Sam. 21:12). Furthermore, when David went to bring the ark of God from Kiriath-jearim he took all the people who were with him from among the lords (*baʿalê*) of Judah (II Sam. 6:2).[74]

Nabal serves as an illustration of the landowning, slaveholding aristocracy of Judah contemporary with David (I Sam. 25:2-10). We are told that he was very rich, that he had three thousand sheep and a thousand goats. In response to David's demand for a gift or tribute, Nabal answered, "Who is David? . . . There are many servants nowadays who are breaking away from their masters." The remark was not only an affront to David personally, but a suggestion that Nabal had lost a number of slaves as runaways, and the chances were that a number of them were currently in David's retinue (I Sam. 22:2).

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[74] The English versions in common use have translated *baʿalê yᵉhûdāh* in this verse as the name of the place to which David went for the ark, but the partitive *min* prefexed to the form (*mibbaʿalê yᵉhûdāh*) is against such treatment. Suggestions of textual corruption at this point (Herbert G. May and Bruce M. Metzger, eds., *The Oxford Annotated Bible, Revised Standard Version* New York: Oxford University Press, 1962 , p. 382) or textual emendation (S. R. Driver, Notes on the Hebrew Text of the Books of Samuel, pp. 265, 266) are quite unnecessary, since the text makes excellent sense as it reads. It is best to take the form as a common noun referring to the lords of Judah.

Attention has already been directed to the warnings and predictions of Samuel on the nature of the proposed monarchy (I Sam. 8:10-18). He foresaw that there would be an assimilation to the practice of the Canaanite monarchies, involving confiscation, feudal grants, enforced labor, burdensome taxation, and other abuses previously discussed. It has been sometimes overlooked, however, that Samuel's words carry inferences about what had already come to pass concerning the property holders in Israel. The passage assumes that a number of Samuel's auditors held slaves as well as real estate. His prediction was not only that free men would be depressed into bondage, but that free men who were themselves holders of slaves would be deprived of those slaves, and then be reduced ultimately to servitude (8:16, 17). In the course of the monarchy the movement would accelerate, with the size of the estates increasing as the number of property holders decreased. Not only the freeholding peasants would lose out, however, but the aristocracy would contract upon itself, the wealthier *ba‘alîm* taking over the others who should lose out in the competition.

It was to be expected that the king's relatives and officials would be numbered among the great land owners. Absalom, the king's son, held property in two localities. He had city property in Jerusalem, and had also an estate at Baal-hazor, near Ephraim, where he kept large flocks (II Sam. 14:24, 28; 13:23). Neither of these was his by inheritance, since they lay outside the holdings of his tribe; they must have been his by gift of the king, who confiscated them, or perhaps by purchase. Joab, David's close relative as well as his highest ranking military officer, had a similar situation. He owned what was probably his inheritance in Judah (I Kings 2:34), but happened also to own the field next to Absalom's near Ephraim (II Sam. 14:30). The juxtaposition of these two fields outside the traditional tribal territory of their owners increases the likelihood that these properties were grants of the king.

Another grantee of the king was Abiathar the priest, one of the principal advisors and servants of David (II Sam. 20:25). In reward for his services and in recognition of his office David must have awarded Abiathar with fields from the crown lands. At the beginning of Solomon's reign Abiathar was banished to his estate (I Kings 2:26) because he had championed Adonijah's aspirations to the throne. Solomon did not kill him, nor even take away from him the fields, because of the services rendered to his father. The fields could not have been an ancestral estate in the old Israelite sense, since a priestly family like Abiathar's had no claim to such.[75] A similar situation was that of the priest Amaziah at Bethel, who sought to silence the ministry of Amos. The prophet predicted that Amaziah's land would be parcelled out by line (Amos 7:17). The land was doubtless a grant from crown land because of the office he held, but which he must surely lose as a result of the coming destruction of the state.[76]

The change in the domestic economy, from agriculture and animal husbandry to commerce, supported and stimulated the growth of the aristocracy. The great building programs of Solomon, involving imports from Phoenicia, Arabia, and elsewhere, had to be paid for, and for this purpose Solomon reserved to himself the trade monopoly. Israel had mostly to trade with cereals (I Kings 5:11), but when cereals became the object of market speculation, the price went up, and with it the price of land.[77] These factors gave encouragement to the rising aristocracy to acquire more land by purchase, mortgages or other means.

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[75] Alt, "Der Anteil des Königtums an der Sozialen Entwicklung in den Reichen Israel und Juda," Kleine Schriften, III (1959), p. 359.

[76] Ibid., pp. 359, 360.

The expanding cities, favored by the royal policy, rested on a foundation of slavery, exploitation, forced labor, and extremely high taxation. The cities were the centers of political and economic life, and the profits from domestic and foreign trade, as well as the rents from hired land, were concentrated in the hands of a few in the cities, mainly Jerusalem. The cities continued to grow at the expense of the country. The land, while going up in price, remained the basis of economic security, and only a few had their wealth exclusively in money or slaves. The life in the cities, therefore, was still closely related to the land. Many of the city dwellers worked their own fields, at least in part, but some of the greater land lords left the work in the fields to servants, paid employees, or sharecroppers (II Sam. 9:10), while they spent their wealth in luxurious living.[78]

It must always be kept in mind, also, that many large estates were brought into Israel by the incorporation of the Canaanite landlords into the monarchy under David. The wealthy proprietors, holding large estates which they worked with the help of slave labor, were already in possession of their fields under the system of the Canaanite city-states. When David extended the kingdom by conquest many of the former proprietors of great domains remained unchanged in possession of their fields.

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[77] Damaschke, op. cit., p. 8.

[78] Neufeld, "The Emergence of a Royal Urban Society . . .," HUCA, XXXI (1960), p. 42.

It was probably such a Canaanite proprietor from whom Omri bought the hill of Samaria on which to build his new capital. This domain must have already carried the name of its lord, since his name, Shemer, was transmitted to the capital city, Samaria (I Kings 16:24).

The ostraca found at Samaria may testify to the existence of some of these large estates. A number of them indicate the receipt of a quantity of oil or wine from an estate belonging to a person named.[79] For example: בשת העשרת מחצרת לגדיו נבל שמן רחץ, "In the tenth year. From Hazeroth, belonging to Gaddiyau, a jar of fine oil." The estates were not always confined to one place or district; the same owner is connected by the ostraca with various localities. In each district or locality there were several estate owners responsible for shipments to the king's court.

The ringing denunciation of the prophets eloquently testifies to the continual growth of the estates of the aristocracy at the expense of the freeholding peasants. It is not that the rich landlords necessarily took possession of the peasants property without paying for it. When the prophets denounced the princes, the main point was not that they had appropriated what they had not paid for, although that also happened. The principal offense was that they availed themselves of the unfavorable position of the peasant in order to purchase his property, thereby violating the family privilege of solidarity with the property.[80]

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[79] George A. Reisner, Clarence S. Fisher and David G. Lyon, _Harvard Excavations at Samaria_ (Cambridge: Harvard University Press, 1924), Vol. I, pp. 239-242, texts 3, 13, 18, 50. Cited by Y. Yadin, "Recipients or Owners, a Note on the Samaria Ostraca," _IEJ_, IX (1959), pp. 184-187. Yadin appears to be correct in rejecting the interpretation which takes the _lamedh_ prefixed to personal names as indicating the person to whom the shipment of goods was addressed (the official collecting the revenue). Instead, the _lamedh_ would mean "belonging to" the person named. Each ostracon would have been written by a court official on receipt of the shipment, his record being based perhaps on the data inscribed on the jars indicating the provenience and original ownership. Yadin remarks that the inscribed jar handles found at Gibeon would fit in beautifully with this interpretation. For example: גבען לגדד לחננ[יהו] could easily be transferred from this label to an ostracon reading: "In the ...th year. From Gibeon, belonging to Gaddud, belonging to Hananiah." See James B. Pritchard, _Hebrew Inscriptions and Stamps from Gibeon_ (Philadelphia: The University of Pennsylvania Museum, 1959), fig. 3, no. 51.

Isaiah proclaimed woe to those who joined house to house, who added field to field until there was no more room, and the great landlord possessed all (Isa. 5:8). He announced judgment upon the elders of the people and the princes who devoured the vineyards and took the spoil of the poor, crushing the people and grinding the faces of the poor (3:14-15). The prophet's general charges of their injustice to the poor and the needy, so that they could not get what was their right, and of their failure to champion the cause of the fatherless and the widow, probably also relate directly to the matter of taking over the land of those who were at a disadvantage (1:23; 10:1-2; 29:20-21). Isaiah implied that the princes and others who had economic or political power used the regular processes of Canaanite law or custom to take over land that should have remained inalienable.

Hosea restricted himself to one direct remark about this problem when he declared that the princes of Judah had become like those who remove the landmark (Hos. 5:10). However, the same prophet had much to say concerning Israel's assimilation to the Canaanite religion, and since that was intimately related to the practices of agriculture and animal husbandry (see especially Hos. 2), it has a bearing on the matter of land acquisitions. Acceptance of Canaanite religious concepts would go hand in hand with Canaanite economic practices, so furthering the expansion of the landed aristocracy.

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[80] Pedersen, _Israel_, _Its Life and Customs_, I and II, p. 83.

Micah spoke directly to the point when he announced woe to those who took over other people's property simply because they had the power to do so.

> Woe to those who devise wickedness and work evil on their beds! When the morning dawns, they perform it, because it is in the power of their hand. They covet fields, and seize them; and houses, and take them away; they oppress a man and his house, a man and his inheritance (Micah 2:1-2).

He predicts that a judgment is coming in which all their fields would be divided among their foreign captors (2:4-5). Doubtless Micah includes the taking over of peasant land among those offenses of the rulers about which he speaks when he says that they tear the skin from off his people and eat their flesh (3:2-3).

Jeremiah is similar to Isaiah in the way he condemns the people for failing to obtain justice for the fatherless and to defend the rights of the needy (Jer. 5:28). It is surely proper to relate this to the development of big estates also, since he prefaces this with the denunciation of wicked men who set traps and catch men like birds, who by their treachery have become great and rich (5:26, 27). Compare also 22:3 and 7:5-7.

What we may infer from these passages from the prophets is that throughout the monarchical period property was becoming more easily alienable and was being collected into larger and larger estates. This movement began in the cities, of course, and spread to the villages much more slowly. The urban centers introduced the sale of land first, partly because of the presence of the Canaanite population which had known alienable property for centuries, and partly because contractual law developed in the cities under the influence of the commercial traffic.[81] At the end of the royal period the sale of land was common enough so as to be an index to the prosperity of the country. In order to predict that riches and prosperity would return to Israel, Jeremiah declared that throughout the land fields would be bought for money, and deeds would be signed, sealed, and witnessed (Jer. 32:44).

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[81] **Jacques** Pirenne, "Les Institutions du Peuple Hebreu," AHDO/RIDA, II (1953), p. 130.

There are known two documents of sale from the end of the monarchical period. Two cuneiform tablets found at Gezer contain these contracts, which were made in the period of Assyrian rule in the seventh century, B. C., and drawn up in Assyrian.[82] The sellers in one of the tablets are presumably Assyrian; in the other the seller has an Israelite name. They help to make more vivid the following words of Jeremiah:

> And I bought the field of Anathoth from Hanamel my cousin, and weighed out the money to him, seventeen shekels of silver. I signed the deed, sealed it, got witnesses, and weighed the money on the scales. Then I took the sealed deed of purchase, containing the terms and conditions, and the open copy; and I gave the deed of purchase to Baruch the son of Neriah son of Mahseiah, in the presence of Hanamel my cousin, in the presence of the witnesses who signed the deed of purchase, and in the presence of all the Jews who were sitting in the court of the guard. I charged Baruch in their presence, saying, Thus says the LORD of Hosts, the God of Israel: Take these deeds, both this sealed deed of purchase and this open deed, and put them in an earthenware vessel, that they may last for a long time (Jer. 32:9-14).

It is probable that Jeremiah's contract was drawn up on papyrus or parchment however,[83] since it was stored in a jar with a view to prolonging its existence. Assyria, as the political power of the land, doubtless exerted strong cultural influence as well, and the two sales contracts in Assyrian found at Gezer show that the Assyrians, who had known alienable property for many centuries, found it natural to follow the Canaanite custom with respect to land tenure.[84]

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[82] T. G. Pinches, "The Fragment of an Assyrian Tablet Found at Gezer," PEQ, 1904, pp. 229-236; C. H. W. Johns, "The New Cuneiform Tablet from Gezer," PEQ, 1905, pp. 206-210.

[83] DeVaux, Ancient Israel, p. 168.

There is little evidence to show that the temple in Israel was a great land-owner, and had important domains to dispose of, like the temples of other nations.[85] The lands which the Levites held do not appear to belong to it, but were held much in the same way as that held by members of other tribes. A possible indication of temple-held property is Lev. 27:20-21, having to do with land dedicated to Yahweh and not redeemed.

There is no direct evidence that the temple extended loans as did those of Mesopotamia,[86] although there is an example of a loan from a Canaanite temple in Jud. 9:4. The Israelite temple did have its treasury, which was not at all inconsiderable, and it was drawn upon whenever tribute had to be paid to an enemy. The temple was an important economic center. Not only were gifts made to the temple, but valuable property in the form of gold, silver, slaves, and animals were delivered to the temple as Yahweh's share in the booty taken in war (Num. 31:25-47; II Sam. 8:10-12; I Chron. 18:11).[87] However, these points are not decisive in the matter, and for the present the question should be left open.

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[84] The customary forms for land sales in Assyria for the eighth and seventh centuries, B.C., are given in detail in C. H. W. Jones, Assyrian Deeds and Documents (Cambridge: Deighton Bell and Co., 1898-1923), III, pp. 291-363. For examples of the type of document dealing with the sale of a field, see Vol. IV, pp. 34-59.

[85] Contrast Pirenne, "Les Institutions Primitives du Peuple Hebreu," AHDO, V (1950-51), p. 115.

[86] Contrast Edward Neufeld, "The Prohibition Against Loans at Interest in Ancient Hebrew Laws," HUCA, XXVI (1955), pp. 379-383.

[87] Ibid.

Reduction of the Peasant Class

The peasant freeholders who fell into debt and eventually lost their farms could, in some cases, become tenant farmers for absentee landlords, receiving a share of the produce for their labors; others simply became slaves. An appeal to the prophet Elisha by a widow reveals what was probably typical (II Kings 4:1). The woman complained that her husband was dead and that the creditor had come to take her two children to be his slaves. Probably the husband had put his own person in security for a loan. His untimely death had prevented him from paying off the debt, so the creditor had come to place a claim on his two children.

Under the rule of the house of Omri the Northern Kingdom must have had many distressing cases like the one above. The peasantry was burdened by war service, taxation, and inflated prices. There was also an occasional failure of crops due to drought. In such cases, the poorer peasant borrowed from his wealthier neighbor, with his loan being secured by pledge or mortgage. But if the conditions which led to the borrowing continued as before, it became extremely difficult if not impossible to repay. The frequent result was foreclosure and alienation of the kinship property, and servitude for the farmer. Some of the slave labor could have been absorbed by the royal domains, which were worked by slaves and managed by royal overseers.

At certain times some of the dispossessed peasants could be taken up and absorbed in the corvée, or forced labor. The tremendous trade in which Solomon engaged, and the building program which he undertook, were paid for not only by the tribute of conquered peoples like the Edomites and Moabites, but also by the exploited labor of Hebrews and other subjects within the kingdom. The free landholders who gave up the struggle to maintain their lands could drift into the cities and be swallowed up by the royal levies of Solomon. This was another aspect of the difficulties foreseen by Samuel when he warned them about the nature of the kingdom (II Sam. 8:12, 16, 17).

Forced labor was common in most parts of the Near East, but it did not develop in Israel until after the institution of the monarchy. David is said to have had an administrator in charge of the forced labor (II Sam. 20:23), but that was probably at the end of his reign, and the institution did not take its full proportions until under Solomon. A summary of Solomon's employment of forced labor (*maś*) is given in I Kings 9:15-19; and the projects said to have been accomplished by this means were the building of the temple and his palace, the Millo and the wall of Jerusalem, and the fortifications of the cities of Hazor, Megiddo, Gezer, Beth-horon the lower, Baalath and Tamar, plus the store-cities and garrison towns. The list, however, is not exhaustive.

The levy of forced labor recruited for those projects is said to have come from the non-Israelites of the realm who had been subjugated by the expansion of the kingdom, the descendants of the Canaanites and other peoples who had escaped extermination (I Kings 9:20-22; II Chron. 8:7-9; 2:16-17). The text of I Kings 9:21 uses the expression *maś* *‘ob̲ēd* (servile levy) to refer to these workers, which may be intended to distinguish that levy from one to which Israelites were subjected.[88] At least a distinction is intended in some way, because I Kings 5:13 f. (Hebrew, 5:27) says that Solomon raised a levy of forced labor out of all Israel of thirty thousand men and sent them to Lebanon, where they were used for the acquiring of lumber for his building programs.

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[88] DeVaux, *Ancient Israel*, p. 89.

Whatever the technical distinction may have been, the difference was not enough to allay the resentment of those Israelites who were directly affected by it. Jeroboam was an able young man whom Solomon placed over the levy (*śēḇel*) of the house of Joseph, that portion of the land comprising the middle hill country (I Kings 11:28). This levy was very clearly made up of Israelites, and it was most likely this burden laid on Israelites which incited Jeroboam to revolt,[89] or at least it was the condition which provided for him a following. It was Rehoboam's unwise sending of the chief officer over the forced labor (*maś*) to the scene of the trouble which caused the rebellion to break out in open hostilities (I Kings 12:18). The bitterness on the part of the rebels can be appreciated when one remembers that they had not only been subjected to the indignity of forced labor, but beforehand many of them had as a result of the royal policies lost their heritable kinship properties.

Brief reference has been made to another state program which contributed to the reduction of the peasant class and the consequent increase of the holdings and power of the aristocracy. Every mobilization of Israel for warfare, such as Ahab's battle for Ramoth-gilead (I Kings 22) or Jehoram's fight against Moab (II Kings 3:6) was a call upon the peasants to go to war. This was in effect an indirect tax, although the campaigns usually took place after the harvest. Furthermore, the loss of Moab as a vassal state reduced the incoming tribute and put a correspondingly larger burden upon the peasants.

When the two kingdoms of Israel became vassals to the great powers, ruinous taxation was put upon the proprietors to raise the tribute. King

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[89] *Ibid.*, p. 142.

Menahem paid a thousand talents of silver to King Tiglath Pileser of Assyria, after the latter had overrun the Northern Kingdom, so that he might be retained on the throne as the vassal king (II Kings 15:19, 20). Menahem raised this amount by imposing an assessment of fifty shekels upon all the wealthy men (*gibbôrê haḥayil*), which means that sixty thousand proprietors paid the tax. Some of them, already on the brink of bankruptcy, would find this kind of taxation disastrous. Judah must have faced the same problem, and Hezekiah's rebellion against the tribute (II Kings 18:7), may have been due to the restlessness of the landed proprietors from whom the money was raised.[90] The Egyptian Pharoah imposed a tribute on Judah when Jehoiakim was king, and the record says explicitly that the money was raised by taxes (II Kings 23:33-35). Those from whom this money was exacted are specified as the people of the land (*ʿām haʾareṣ*), that is, those who had certain rights as citizens, but distinguished from the royal court.[91] They would be preeminently the proprietors.

Taxation of that kind would cause borrowing, which would prove ruinous to some but work to the advantage of a few, and so increase the trend toward latifundism. The necessity to borrow gave undue advantage to those able to lend money, and there is reflected in various texts an attitude toward the money lender which suggests that the latter did not hesitate to take full advantage of the situation (Jer. 15:10; Psa. 109:11). Their readiness to take over property from a debtor in distress is reflected in the warnings against becoming surety for debts.[92]

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[90] Wallis, *God and the Social Process*, p. 229.

[91] DeVaux, *Ancient Israel*, pp. 70, 71. The meaning of the idiom changes in different historical periods.

[92] For a partial list of relevant passages, see Prov. 22:26-28; 6:1-5; 11:15; 17:18; 20:16.

Currents of Reaction

The profound social and economic changes taking place in Israel as the result of the institution of the monarchy did not go unchallenged. Early in the history of the kingdom Absalom led a revolt against David, and although there is no evidence to show that he was motivated by resentment against the policies of the monarchy, but only by personal ambition, yet it appears that he got support for his rebellion from those who had grievances against the kingship (II Sam. 15:2-6). In this case the objection may well have been that the king was not moving fast enough toward the policies of the new commercialism. Of a different spirit was the next rebellion, when after Absalom's death another revolt broke out under the leadership of Sheba, the son of Bichri (II Sam. 20:1-22). The antagonism was ostensibly over the favored position of Judah in relation to the king's person, but the problem went deeper. Feeling slighted by David, they took the occasion to reject the kingship. Sheba's call to rebellion, "every man to his tents, O Israel," was the signal to resume the old tribal independence,[93] and thereby reject the monarchy. Perhaps references to portion (*ḥēlēq*) and inheritance (*nāḥᵃlāh*) in their complaint, while primarily referring to their relation to the king, were intended secondarily to reinforce the appeal for a return to the old ways, symbolized by the inalienability of one's land.

The most serious challenge to the new order of things under the monarchy led to schism and the division of the state into two kingdoms. The economic oppressions of King Solomon, especially the policy of forced labor, caused the revolt under Jeroboam (I Kings 11:26f.). When

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[93] S. R. Driver, *Notes on the Hebrew Text of the Books of Samuel*, p. 340.

Solomon's son, Rehoboam, sought to continue the policies of his father, open conflict resulted and the schism was made permanent. Israel's slogans of secession from the united monarchy were practically the same as those used in the revolt under Sheba the son of Bichri: "What portion have we in David? We have no inheritance in the son of Jesse. To your tents, O Israel! Look now to your own house, David" (I Kings 11:16). The slight variations only emphasize the rejection of the unpopular measures of the Davidic dynasty and the preference for the old customs. Doubtless there was the expectation on the part of some, not only to be relieved of forced labor, but also to regain property from which they had been dispossessed.

The Northern Kingdom managed to sustain for some time its role of reaction to the new commercialism and the new policies on land tenure. The capital at Shechem had an element which reacted vigorously to the new trends, and this was also true of Tirzah, which shortly became the new capital. Isolated geographically as it was, it was oriented more to the east than to the west, and therefore away from Canaanite commercialism. The political influence of the "prophetic party" was strong there, and the principle of dynastic succession did not take root. One may assume the severance of commercial ties with Tyre and other Canaanite city states, the abolition of the corvée, and the arrest of the drift away from the old custom of inalienable real property.[94] It was ironic that Tirzah should be replaced by Samaria, a development which eventuated in a greater than ever assimilation to Canaanite culture.

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[94] Neufeld believes that there was a serious attempt at this time to revive the sabbatical year, the *š^{e}miṭṭāh*, and the jubilee, "Socio-Economic Background . . .," *Revista degli Studi Orientali*, XXXIII (1958), p. 117.

After the building of Samaria and the opulent reigns of Omri and Ahab, the spirit of reaction was still popular, however. It was the prophet Elisha who fomented the revolution under Jehu, but the movement evidently had great popular support, enabling Jehu to exterminate the whole house of Ahab. The sentiment was for a return to the old ways, not only in religion but in social customs as well. The prophetic movement, therefore, was opposed to innovation and concerned rather with revival.

If the prophets were the most vocal in their opposition to the commercialism of the monarchy and furnished the leadership against it, their natural supporters in this opposition were the countrymen, the villagers. The small villages or agricultural communities were much slower than the cities to be influenced by the new economic policies. They continued to exist under the rule of the monarchy to considerable degree as independent units, seeking to preserve the old customs concerning property, the rights of family, and the system of kinship. The standard of wealth was the possession of agricultural land, or pasture ground, cattle, sheep and goats. Occupation in agriculture carried high prestige, and rich men like Boaz or the rich farmer of Shunem (II Kings 4:18) were found working in the field with the reapers. Saul had done his own ploughing, even after having been designated as king (I Sam. 11:5), and Elisha also was ploughing with oxen when the mantle of Elijah fell upon him (I Kings 19:19). The same attitudes must have persisted in the villages to the end of the monarchy, and the villages reflected little social and economic stratification.[95]

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[95] Neufeld, "The Emergence of a Royal Urban Society . . .," HUCA, XXXI (1960), pp. 35, 36.

Elijah and Elisha evidently blamed the economic policies of the monarchy for the famines in the land which brought such misery upon the people (I Kings 17:1 ff.; II Kings 6:24 ff.; II Kings 8:1 ff.). They were judgments provoked by the exportation of agricultural products, and they were so severe that they swept numbers of people into servitude for debts.[96]

The prophet Elijah reacted strongly to Ahab's unjust possession of Naboth's vineyard, and predicted his destruction and that of his posterity as well (I Kings 21:17-24). Naboth's refusal to sell his property had not been because he was offered an unfair price, nor did the prophet object on these grounds. Ahab had offered to give him a better vineyard or to give him its value in money (21:2). Such a proposition must have seemed quite natural and fair to Ahab, oriented as he was to the practices of the Canaanites. The kings of Ugarit frequently engaged in such trades with their subjects.[97] The objection to such a sale or trade was based solely on the fact that it would violate the tradition of land tenure carried down from the period of the Judges: "The LORD forbid that I should sell (n̄aṯan) you the inheritance of my fathers" (21:3). Naboth's refusal, therefore, was an instance of the strong resistance by many landholders against the breakdown of the old customs under the impact of the royal policies. The projection of the prophet into the incident shows that Naboth was not alone in his sentiment, but was representative of a significant group.

The prophets not only denounced the developing latifundism outrightly, as indicated above, but they also opposed it by predicting the return to that old order of things in which every Israelite possessed his own field and reaped the reward of his own labor. Micah depicted the golden age that was to come as characterized by a condition in which every man would sit under his own vine and under his own fig tree (4:4). Amos, when inveighing against the corruption of the royal chapel at Bethel, prophesied that in consequence of a coming judgment their lands, acquired in violation of the old traditions, would be parcelled out by line (7:17). He meant more than that they should lose their lands; he meant that their lands should be re-allotted according to the ancient custom and possessed by other peoples.[98]

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[96] Pirenne, AHDO/RIDA, II (1953), p. 115.

[97] PRU, III, no. 16.383; p. 164; no. 16.197, p. 150; see above, p. 170.

In a similar way Micah predicts a judgment upon the oppressors who have taken over the fields of others. They shall wail and complain that God has removed the portion, he has divided the fields (2:2-5). It is possible that those to whom the fields are to be divided are not the foreign invaders, as many suppose, but the peasants of the land who will repossess the real estate according to the old order in which the land belonged to the local members of the community.[99] But whatever may be the identity of those who will get the fields, one cannot mistake the prophet's opposition to the lords of the latifundium, nor deny his conviction that the land was to be redistributed.

The prophet Ezekiel was also convinced that God would reverse the situation developed throughout the monarchy and restore the system of allotment known from the days of the Judges. In his prediction of the ideal theocracy he prophesied that the land would again be divided by lot among the tribes (47:13-21). A special portion was to be marked off as Yahweh's, and in it was to be built the sanctuary, while other parts of it were to be for the priests and the Levites who would minister there (45:1-5). Other portions would be specifically designated for the prince, and there would be no occasion, therefore, for the effort to build up a large crown estate at the expense of the proper heirs. The princes are pointedly told not to oppress the people, but to accord them their own properties (45:8); in that new order they must cease their evictions of the people (45:9). All of this makes quite clear, however, what was the common procedure during the monarchy.

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[98] Alt, "Der Anteil des Königtums an der Sozialen Entwicklung in den Reichen Israel und Juda," *Kleine Schriften*, III (1959), p. 360.

[99] Alt, "ΓΗΣ ΑΝΑΔΑΣΜΟΣ in Juda," *Kleine Schriften*, III, p. 376-381.

Further to remove occasion for exploitation in the ideal state, the property of the prince would be inalienable. He could make a gift out of his estate to his sons, but to no one else. If he should make a gift from his inheritance to one of his servants, it might be retained by the servant only until the year of release, when it should revert to the prince (46:16, 17). With his own estate inalienable, he should treat the property of the people as the same:

> The prince shall not take any of the inheritance of the people, thrusting them out of their property; he shall give his sons their inheritance out of his own property, so that none of my people shall be dispossessed of his property (46:18).

In Ezekiel's prediction of the return to the old traditions, even the institution of the release (*d^{e}rôr*) is to be restored (46:17). It is not clear whether this is a reference to the jubilee or to the seven-year release. In contrast to this stipulation that the king's gift from his estate to his servant must be returned in the year of release is the above-mentioned eighteenth century document from Ḫana, wherein it is declared that the king's gift of property to his servant shall not revert to him in the release.[100]

Another special feature of Ezekiel's ideal order provides that strangers (non-Israelites) who should settle in the land should receive an inheritance like the rest (47:21-23).

The Book of Jeremiah indicates in several ways that forces contrary to the general trend were at work, urging a return to the former customs. Jer. 34:8 ff. relates of a covenant entered into by King Zedekiah and his nobles to proclaim a release (d^{e}rôr) to all the slaves. The decision to do so came at a time when Jerusalem was besieged by the Babylonians, and they evidently thought by this means to placate God and to avert catastrophe. Furthermore, food supply had become scarce during the siege, and at the same time the slaves had become economically useless. Thus the old religious tradition became a marvellous excuse for irresponsibility. When the approach of an Egyptian army caused a temporary lifting of the siege, the king and his nobles thought it safe to rescind their action, so the manumitted slaves were once more impressed into bondage. Such perfidy was vigorously denounced by Jeremiah, who declared that the manumission was in accord with the ancient custom of the Judges period (34:13, 14; Deut. 15:2 f.), and should have remained in force.

A force of at least passive resistance against the general policies of commercialism and against permanent alienation of property was represented in the Rechabites (Jer. 35:2 f.). With respect to property it was their practice to avoid ownership of house, field, or vineyard, but to live in tents (35:7, 9). What they did not own could not be exploited from them, and further, their way of life could be a visual appeal for a return to the old customs, as well as a protest against the injustices that were current.

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[100] Julius Lewy, Eretz-Israel, V (1958) pp. 23-25; above, p. 128.

It is interesting to observe that a progenitor of this group was associated with Jehu in his revolt against Ahab and the commercial policies which he represented (II Kings 10:15, 16).

Finally, Jeremiah's own participation in a purchase of property was at least in part an expression of resistance to the free and individual holding of land and to permanent alienation, and of conformity to the old Israelite system (Jer. 32:6-44). For although it was witnessed and documented in a manner reminiscent of the Mesopotamian documents of outright sale (32:9-14), it was none-the-less an act which recognized the privilege of retaining the property in the family, and thereby conformed to the old custom (32:8). However, with this act Jeremiah predicted a time of restoration after the Babylonian conquest when there would be active buying and selling of fields in the land (32:43, 44). It is not indicated that he meant only "redemptions" after the pattern of his own act, so his prediction of future sales seems to be an admission of the _fait accompli_ - the evolution of a system of unrestricted sale. It is also possible, however, that he was thinking of buying and selling in the restricted sense in which the terms are used in the law of jubilee (Lev. 25), so that the results would amount to long-term leases, and not permanent sales. To understand it thus would bring Jeremiah's prophecy into conformity with the predictions of the other prophets, and with his own act of buying his kinsman's property.

Conclusion

In spite of the various elements of resistance, nothing successfully arrested the trend toward permanent alienation of land and the growth of large estates. The only important passage relating to land tenure from post-exilic times (Neh. 5:1-13) shows that impoverished peasants were losing their lands to the aristocracy, just as they were before the exile. It was the institution of the monarchy, therefore, and the commercial policies embraced by it, which brought about the one significant break in the continuity of Israel's traditions so far as land tenure was concerned. We have seen that from the beginning of Israel as a covenant community, and during the period of the tribal confederacy, the prevailing viewpoint was that a man's land was his from Yahweh, and was inalienable; but the monarchy merged the covenant community with a foreign culture whose strength lay in urban centers, and this merger promoted a continual drift toward the practice of permanent alienation of land.

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